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Vol. I.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 4, Original.

MINNESOTA STATE LIBRARY

THE STATE OF NORTH CAROLINA, COMPLAINANT,

vs.

THE STATE OF TENNESSEE.

IN EQUITY.

FILED MARCH 22, 1909.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 4, Original.

THE STATE OF NORTH CAROLINA, COMPLAINANT,

vs.

THE STATE OF TENNESSEE.

IN EQUITY.

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1 At the Capitol of the United States, in the City of Washington and District of Columbia, being the present Seat of the National Government of the United States, on the second Monday of October (being the 12th day of the same month), in the year of our Lord, one thousand nine hundred and eight, and of the independence of the United States the one hundred and thirty-third. The Supreme Court of the United States met agreeably to law.

And afterwards, to wit, on the 15th day of March, A. D. 1909, the following entry appears of record, viz:

2 Supreme Court of the United States, October Term, 1908.

No. —, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

Mr. Theodore F. Davidson, of counsel for the complainant, submitted to the consideration of the Court a motion for leave to file a bill of complaint herein.

March 15, 1909.

Which said motion is in words and figures following, viz:

3 In the Supreme Court of the United States, October Term, 1908.

No. —.

STATE OF NORTH CAROLINA, Complainant,
vs.
STATE OF TENNESSEE, Defendant.

Motion for Leave to File Bill of Complaint.

Now comes the State of North Carolina, by T. W. Bickett, its Attorney General, and Theo. F. Davidson, Esq., solicitor (representing, with the Attorney General, the State of North Carolina), and moves the court for leave to file the bill of complaint herewith exhibited, in a controversy which has arisen between said States touching the boundaries and jurisdiction; and that the proper process may issue thereon, notifying the defendant that such a bill has been filed, and that said defendant may appear and defend the same.

T. W. BICKETT,
Attorney General of North Carolina,
THEO. F. DAVIDSON,
Solicitors for Complainant.

[Endorsed:] Supreme Court U. S., October term, 1908. Term No. —, original. State of North Carolina, complainant, vs. State of Tennessee. Motion for leave to file bill of complaint. Filed March 15, 1909.

4 And afterwards, to wit, on the 22d day of March, A. D. 1909, the following order appears of record, viz:

5 Supreme Court of the United States, October Term, 1908.

No. 13, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

On consideration of a motion for leave to file the bill of complaint herein,

It is now here ordered by the Court that said motion be, and the same is hereby, granted, and that process issue, returnable on the first Monday of June, next.

March 22, 1909.

6 And on the same day, to wit, on the 22d day of March, A. D. 1909, a Bill of Complaint was filed in words & figures following, viz:

7 In the Supreme Court of the United States, October Term, A. D. 1908.

Original Jurisdiction in Equity.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE, Defendant.

Bill of Complaint of the State of North Carolina Against the State of Tennessee.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The State of North Carolina, one of the United States of America, brings this its bill of complaint against the State of Tennessee, also one of the United States of America, and thereupon your oratrix complains and alleges:

I. That this suit is brought under and in pursuance of a law of the State of North Carolina entitled "An act to amend chapter 113, section 5315, of the Revisal of 1905," ratified February 4, 1909, which act empowers the Governor of the State of North Carolina to institute and prosecute, in the name of and in behalf of said State,

in the Supreme Court of the United States, such actions and proceedings as might be necessary to establish and protect the boundary lines between the States of North Carolina and adjoining States, and is brought and instituted under the authority and by the direction of the Governor of the State of North Carolina to the Attorney General of said State.

II. That the boundary between the States of North Carolina and Tennessee is disputed and in controversy in so far as the same is hereinafter set out, and that the State of Tennessee has lately been making grants of lands within the disputed territory, and exercising sovereignty and jurisdiction thereover, and interfering seriously with the State of North Carolina in the undisputed exercise of its sovereignty and jurisdiction over the lands in the said disputed territory, which sovereignty and jurisdiction of said State of North Carolina was, up to the year 1892, exercised without let, hindrance, or controversy.

III. That the territory constituting the present State of Tennessee was ceded to the United States by act of the Legislature of North Carolina in 1789 (said act being found in the Revised Statutes of 1837 of said State, vol. 2, p. 171); and in said act of cession the boundary line is described from the French Broad River westwardly as follows, to wit: "Thence along the highest ridge of the said mountain" (Iron Mountain) "to the place where it is called the Great Iron or Smoky Mountain; thence along the extreme height of said mountain to the place where it is called Unicoi or Unaka Mountain, between the Indian towns of Cowee and Old Chota; thence along the main ridge of said mountain to the southern boundary of this State"; that the deed made by the State of North Carolina in pursuance of the above-mentioned act, which was dated the twenty-fifth day of July, 1790, and which was accepted by an act of Congress ("Laws of United States," vol. 2, p. 85, old edition of 1815), follows the same description, as does also the Constitution of the State of Tennessee (article 1, section 31), declaring the boundaries of said State.

9 IV. That in the year 1795 the General Assembly of the State of North Carolina passed an act (Revised Statutes, 1837, vol. 2, p. 93) appointing commissioners "to settle the boundary line between this State and the State of Tennessee; and these commissioners, acting under said appointment and a similar authority and appointment by the State of Tennessee, "settled" this line from the east to a point on the Great Iron or Smoky Mountain west of the Pigeon River, marked by a stone set up on the north side of the Cataloochee turnpike road, about due north from the present town of Waynesville, in Heywood County, North Carolina, and about sixty-five miles east of the point where the Tennessee River passes through said mountain range.

V. That afterwards, to wit, in the year A. D. 1819, the General Assembly of the State of North Carolina passed an act (Revised Statutes (1837), vol. 2, p. 94) authorizing the appointment of commissioners "to accurately run, distinctly mark, and permanently establish" the boundary line between the States of North Carolina

and Tennessee from the point where the line of the former commissioners stopped to the western terminus, and about the same time the State of Tennessee enacted a similar act, and in pursuance of said acts the Governor of Tennessee appointed three commissioners, to wit, A. Smith, Isaac Allen, and Simeon Perry, and the Governor of North Carolina appointed James Mebane, M. Stokes, and R. Love as commissioners on behalf of the State of North Carolina, to accurately run, distinctly mark, and permanently establish the boundary line between the said States from the point where the former commissioners stopped to its western terminus; and thereafter the said commissioners, acting jointly, surveyed, located, and marked said State line between the points last above designated, and in August, 1821, filed with each State a report and map setting out that part of the State line which they had so surveyed, located, and
10 marked, and, as your oratrix is informed and believes, filed also the field-notes of the surveyors whom the said commissioners had employed to assist in making the said surveys and maps, and that after the filing of said reports, maps, and field-notes an act was passed by the General Assembly of the State of North Carolina in the year 1821 (Revised Statutes (1837), vol. 2, p. 96), and a similar act was passed by the Legislature of the State of Tennessee at about the same time, and each of said acts adopted and confirmed the line run by the said commissioners under the acts aforesaid and shown by the map so filed, and established and described the same as follows: "Beginning at a stone set up on the north side of the Cataloochee turnpike road, marked on the west side 'Ten. 1821,' and on the east side 'N. C. 1821,' and running thence on a southwestwardly course to the Bald Rock on the summit of the Great Iron or Smoky Mountain, and continuing southwestwardly on the extreme heights thereof to where it strikes Tennessee River about seven miles above the old Indian town of Tallassee, crossing Porter's Gap at a distance of twenty-two miles from the beginning, passing the Meigs boundary line at thirty-one and a half miles, the Equanautley Path at fifty-three miles, and crossing Tennessee River at a distance of sixty-five miles from the beginning; from the Tennessee River to the main ridge and along the extreme height of the same to the place where it is called Unicoi or Unaka Mountain, striking the old trading path from the valley towns to the over-hill towns near the head of the west fork of Tellico River, at the distance of ninety-three miles from the beginning; thence along the extreme heights of the Unicoi or Unaka Mountain to the southwest end thereof at the Unicoi or Unaka turnpike road, where a corner-stone is set and marked 'Ten.' on the west side and 'N. C.' on the east side and where a hickory tree is also marked on the south side 'Ten. 101 m.' and on the north side 'N. C. 101 m.,' being 101 miles from the beginning;" and thence by a general southerly course to
11 the southern boundary line of the States of Tennessee and North Carolina, where was set up by said commissioners a square post, marked on the west side "Ten. 1821," and on the east side "N. C. 1821," and on the south side "G."

VI. That ever since the confirmation of said survey, maps, re-

ports, and location of said line by the acts of the respective States in 1821, as aforesaid, until 1892, the respective States of North Carolina and Tennessee have exercised sovereignty and jurisdiction in all respects and have made surveys and grants of lands in accordance with the State line as located by the said last-named commissioners, and up to the line as laid down and determined by them and no further, and have recognized said line as the true line, and the said line has been recognized by the Congress of the United States and by the United States government in organizing its courts, making its appointments, and administering its laws in the respective States, and the United States Government, through its Coast Survey and its Geological Survey, for Government purposes, went over and identified the survey and line as located in 1821 by the said commissioners on behalf of the States of North Carolina and Tennessee from surveys and other information obtained on the ground in the years 1884, 1885, and 1892, and in the year 1892 caused an official topographical map of the said territory to be constructed, showing the line as located by the said commissioners, and in the year 1904 caused the said topographical map to be revised without changing a part of the State line which is in dispute herein.

VII. That said boundary line between the States of North Carolina and Tennessee may be generally described as following the main ridge or watershed of the Allegheny Mountain range, which has many local names, such as the Great Iron or Smoky Mountain and Unaka or Unicoi Mountain, but between the "extreme height"
12 of the Great Iron or Smoky Mountain and the "main ridge" of Unaka or Unicoi Mountain the Tennessee River breaks through the mountain in its northwesterly course, and that part of the State line which descends from the extreme height of the Great Smoky Mountain to Tennessee River, crosses the river, and ascends to the main ridge of Unaka Mountain has fallen into dispute. The line having been surveyed through a heavily timbered mountain country, at a time when that part of it was still occupied by the Cherokee Indians, few of the mountains and streams had names known to the commissioners which could be indicated upon their maps, and the line had to be marked upon the ground by marks made upon trees. Many of these marks, designated in the report of the commissioners and thereafter known as "State-line marks," which consisted of two hacks above a blaze, have been destroyed by the ravages of time and the ignorance and recklessness of man, and some ancient marks on a line running about half a mile northeast of the Tennessee River and on the Hangover Ridge southwest of said river, which are not in fact State-line marks, have been mistaken by surveyors for State-line marks, with the result that dispute and controversy have arisen as to the true location of the State line between the extreme height of the mountain northeasterly of Tennessee River and the main ridge thereof southwesterly of the river, as aforesaid. Your oratrix has always believed and acted upon the belief, and alleges the fact to be, that the line between these points descends from the extreme height of the mountain northeast of the river to the river, crosses the river to a point in the southwest bank

thereof just west of the mouth of the stream known as Slick Rock Creek, follows the creek about five miles to a ridge leading up to the main ridge, follows said ridge up to the summit, known as Big Fodderstack Mountain, and follows the main ridge thence to the junction of the Big Fodderstack and Hangover leads, and thence follows the main ridge of Unaka Mountain southwesterly. Up to the year 1892 said line as claimed by your oratrix has been
13 conceded to be the true line by the residents and surveyors of both States in that vicinity, and said line is the line fixed and located by said commissioners and marked by them. Your oratrix states that the State of Tennessee recognized this line as the State line in the year 1835, when it laid out the Ocoee land district, and fixed said line as the eastern boundary of said district and of its county of Monroe; that after the removal of the Cherokee Indians from this territory the State of North Carolina, in the year 1853, opened these lands to its citizens for entry, and thereafter issued a large number of grants running to said line as the State line, collected taxes upon all of the lands running to said line from the year 1860 to the present time, and exercised in all respects its jurisdiction over all the lands running to said line; that during the entire period from 1821 to 1892 the State of Tennessee never granted any lands by description which called for any other location of the State line than the one claimed by your oratrix; that in the year 1892 the State of Tennessee issued a grant to H. M. McCroskey and T. E. H. McCroskey for the land lying south of Tennessee River and between the State line as claimed by your oratrix and a line beginning at the junction of the Fodderstack lead with the Hangover lead and running northeasterly along the Hangover lead to Hangover Mountain and northerly from Hangover Mountain to Tennessee River, and described in said grant the last-described line from the junction of the two leads to Tennessee River as the State line between Tennessee and North Carolina. Your oratrix still further states that since 1892 the timber upon the lands in the vicinity of Tennessee River has become valuable; that during the past three or four years the State of Tennessee has undertaken to exercise jurisdiction over the territory lying between the lines above described and to collect taxes thereon; that unseemly strife has resulted from the assertion by each State of jurisdiction over the same territory; that the
14 construction of a railroad along Tennessee River now makes the land in dispute the natural center of large industrial developments, calling for the continuous exercise of all of the functions of government, none of which are possible of exercise in an orderly manner until the true location of this part of the State line has been finally determined.

VIII. That when contests first arose from the granting by the State of Tennessee to citizens of Tennessee of lands long previously granted by the State of North Carolina to her own citizens it was discovered, after the most diligent search in the archives of the State of North Carolina at Raleigh and of the State of Tennessee at Nashville, that neither of the original maps made by the commissioners of 1821 show the location of the State line as located by them nor the field-notes made by the surveyors in 1821 could be found; that the

capitol building at Raleigh, North Carolina, which was then and now is the capital of the State, was destroyed by fire about the year 1832, at which time many of the records of the State of North Carolina were destroyed which records may have included said map and field-notes; that, as your oratrix is informed and believes, some time in the year 1903 or the year 1904 there was discovered by the State archivist of the State of Tennessee, among papers supposed to be worthless, the original map filed with the State of Tennessee by the commissioners of 1821, showing the line run, located, and marked by them and adopted by the States of North Carolina and Tennessee as the State line, as aforesaid; that prior to the finding of said map surveyors had mistaken certain ancient marks for State-line marks, had mistaken which is the main ridge southwest of Tennessee River, because from the Tennessee and Cheoah rivers certain spurs lead to the main ridge southwesterly of Tennessee River, and since the finding of said map have confused Slick Rock Creek with Cheoah River, which is about two miles from said creek, but the said map shows the State line to be where your oratrix has always claimed it
15 to be; but the State of Tennessee, notwithstanding the discovery of said map and the proof which it furnishes of the true location of said State line, nevertheless refuses to recognize said line as fixed by said map and by said commissioners in 1821, but claims a line to the eastward of the true line, taking in a part of the State of North Carolina about ten miles long and three and one-half miles wide at its widest part, and continues to demand taxes thereon and to exercise jurisdiction thereover; and by reason of the premises said line, between a point about a mile northeast of Tennessee River and the junction of the Big Fodderstack and the Hangover leads, about nine miles southwest thereof, has become confused, uncertain, and the subject of contention, and your oratrix is without remedy, except in equity in this court, to establish and confirm its sovereignty, jurisdiction, and property rights over a part of the territory of the complainant, whose rights therein were undisputed for more than seventy years.

Wherefore your oratrix prays that the said defendant may be required to make full and perfect answer to the matters set forth in this bill, and that upon final hearing of this cause the boundary line herein claimed may be ascertained and established by the decree of this court; that the rights of property, of possession, jurisdiction, and sovereignty of your oratrix thereto may be established and quieted and the defendant forever enjoined and restrained from disturbing your oratrix, her officers or people, in the full possession and enjoyment of the same, and for such other and further relief as to the court may seem meet and consistent with equity and good conscience.

May it please your honors to grant unto your oratrix a writ of subpœna, directed to the Governor and the Attorney General of the defendant, commanding them, on a day certain to be named and under a certain penalty, to be and appear in your honorable court, then and there to answer on behalf of the defendant all and singu-
16 lar the premises, and on behalf of the defendant to stand to, perform, and abide such further orders, directions, and decree

as may be made against the defendant; and your oratrix will ever pray.

T. W. BICKETT,
Attorney General of the State of North Carolina.

THEO. F. DAVIDSON,
C. B. MATTHEWS,
Of Counsel.

UNITED STATES OF AMERICA,
State of North Carolina:

T. W. Bickett, being first duly sworn, deposes and says that he is the duly elected, qualified, and acting Attorney General of the State of North Carolina, and as such is authorized to file the foregoing bill; that he has read the said bill, and knows the contents thereof, and that the same is true as he verily believes.

T. W. BICKETT.

Subscribed and sworn to before me this the 10th day of March, 1909. Thos. S. Kenan, clerk of the Supreme Court of the State of North Carolina.

Witness my hand and official seal.

[Seal of the Supreme Court of the State of North Carolina.]

THOS. S. KENAN, *S. C. C.*

[Endorsed:] Supreme Court U. S., October term, 1908, Term No. 13 original. State of North Carolina, complainant, *vs.* State of Tennessee. Bill of complaint. Filed March 22, 1909.

17 And on the same day, to wit, on the 22d day of March, A. D. 1909, order for appearance for the Complainant was filed in the words and figures following, viz:

Order for Appearance.

Supreme Court of the United States, October Term, 1908.

No. 13, Orig'l.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

The Clerk will enter my appearance as Counsel for the Complainant.

THEODORE F. DAVIDSON,
Asheville, N. C.
C. B. MATTHEWS,
Cincinnati, Ohio.

☞NOTE.—Must be signed by a member of the Bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed:] Supreme Court U. S., October Term, 1908. Term No. 13, Original. Appearance for Complainant. Filed Mar. 22, 1909.

18 And afterwards, to wit, on the 12th day of April, A. D. 1909, an appearance for the defendant was filed in the words and figures following, viz:

Order for Appearance.

Supreme Court of the United States, October Term, 1908.

No. 13, Orig'l.

THE STATE OF NORTH CAROLINA, Compl't,
vs.
THE STATE OF TENNESSEE.

The Clerk will enter my appearance as Counsel for the Defendant.
CHARLES T. CATES, JR.

☞NOTE.—Must be signed by a member of the Bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed:] Supreme Court U. S., October Term, 1908. Term No. 13, Orig'l. Appearance for Def't. Filed April 12, 1909.

19 And on the same day, to wit, on the 12th day of April, A. D. 1909, the following entry appears of record, viz:

20 Supreme Court of the United States, October Term, 1908.

No. 13, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

Mr. Charles T. Cates, Jr., of counsel for the defendant, waived the issuing process, and entered his appearance as counsel for the defendant herein and on his motion leave was granted the defendant to file an answer herein on or before the first day of the next term.

April 12, 1909.

21 And afterwards, to wit, on the 30th day of April, A. D. 1909, a waiver of process was filed in words & figures following, viz:

In the Supreme Court of the United States, October Term, 1908.

No. 13, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

The State of Tennessee, defendant in the above entitled cause, does hereby waive the issuance and service of process of service herein, and does hereby enter her appearance having leave until the 1st day of next Term of this Court in which to make defense.

MALCOLM R. PATTERSON,
Governor.

CHARLES T. CATES, JR.,
Attorney General of Tennessee.

Endorsed: Supreme Court U. S. October Term, 1908. Term No. 13, Original. State of North Carolina, complainant, vs. State of Tennessee. Waiver of process by defendant. Filed April 30th, 1909.

22 And afterwards, to wit, on the 3d day of May, A. D. 1909, the following entry appears of record, viz:

23 Supreme Court of the United States, October Term, 1908.

No. 13, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

The motion for leave to the Babcock Lumber & Land Company to intervene herein was submitted to the consideration of the Court by Mr. W. A. Stone and Mr. J. Franklin Shields in support of the same, and leave was granted counsel for the complainant to file a brief in opposition thereto within ten days.

May 3, 1909.

24 Which said motion and petition of the Babcock Lumber and Land Company is in the words and figures following, viz:

25 In the Supreme Court of the United States, October Term, 1908.

No. 13, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE, Defendant.

In Equity.

Motion by Babcock Lumber & Land Company for Leave to File Petition to Intervene and Become a Party Defendant in Above Entitled Case.

And now, to wit: This 3d day of May, 1909, comes the Babcock Lumber & Land Company, a corporation chartered and existing under the laws of the State of Maine and doing business in Monroe County, State of Tennessee, by its attorneys, Messrs. J. Franklin Shields and William A. Stone, and moves the Court for leave to intervene and become a party defendant in the above entitled case, and submits herewith its petition setting forth the facts upon which said motion is based.

J. FRANKLIN SHIELDS,
WILLIAM A. STONE,
Attorneys for the Babcock Lumber & Land Company.

26 In the Supreme Court of the United States, October Term, 1908.

In Equity.

No. 13, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE, Defendant.

Petition of Babcock Lumber & Land Company for Leave to Intervene.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Babcock Lumber & Land Company, a corporation chartered and existing under the laws of the State of Maine and doing business in Monroe County, State of Tennessee, brings this its petition to intervene in the above entitled suit, brought by The State of North Carolina against The State of Tennessee, and showeth:

That in 1789 the territory now comprising the State of Tennessee was ceded by the State of North Carolina to the United States.

That the Cession Act describes the eastern boundary line as follows:

"Beginning on the extreme height of the Stone mountain, at the place where the Virginia line intersects it, running thence along the extreme height of the said mountain to the place where the Wautauga river breaks through it; thence a direct course to the top of the Yellow Mountain, where Bright's road crosses the same; thence along the ridge of said mountain, between the waters
27 of Doe River and the waters of Rock Creek, to the place where the road crosses the Iron mountain; from thence along the extreme height of said mountain to where Nolinchucky river runs through the same; thence to the top of the Bald mountain; thence along the extreme height of the said mountain to the Painted Rock, on French Broad river; thence along the highest ridge of the said mountain to the place where it is called the Great Iron or Smoky Mountain; thence along the extreme height of the said mountain to the place where it is called Unicoy or Unaka mountain, between the Indian towns Cowee and Old Chota; thence along the main ridge of the said mountain to the southern boundary of this State."

That the line sought to be established by the Bill filed in this case is included within the call beginning "thence along the extreme height of the said mountain to the place where it is called Unicoy or Unaka mountain." This portion of the line between the State of North Carolina and the State of Tennessee, the Bill states, alone remains unestablished and unsettled.

That the necessity for a definite location and marking of the line between the States of North Carolina and Tennessee became evident to both states, and in 1821, under acts passed by each state, a joint commission was appointed for the purpose of settling, running and remarking the boundary line. The Tennessee commissioners were appointed under an act which provided that the commissioners should "settle, run and re-mark the boundary line between this state and the state of North Carolina, agreeably to the true intent and meaning of the said Act of the General Assembly of the State of North Carolina, entitled 'An Act for the purpose of ceding to the United States of America certain western lands therein described.'" (See Acts of Tennessee, 1820, Ch. 22). The North Carolina Act, providing for the running of the line, was substantially identical with the Tennessee Statute above set out. (See Iredell & Battle Rev. Statute North Carolina, Vol. 2, page 94.)

That the joint commissioners did run and re-mark the line, and each State passed an act ratifying, confirming and adopting the line as run and reported by the Commissioners. (See Acts of Tennessee, 1821, Ch. 35, p. 45; Iredell & Battle Rev. Statute of North Carolina, p. 96).

28 That the Tennessee confirmatory act is as follows, viz:

"Be it enacted by the General Assembly of the State of Tennessee, that the dividing line run and marked by Alexander Smith, Isaac Allen and Simeon Perry, Commissioners, for and on

behalf of this State, and James Mebane, Montfort Stokes and Robert Love, Commissioners for and on behalf of the State of North Carolina, which dividing line, as run by said Commissioners, begins at a stone set up on the north side of Cataloochee turnpike road, and marked on the west side, Ten. 1821, and on the east side, N. C., 1821; running thence in a southwestwardly course to the Bald Rock, on the summit of the Great Iron or Smoky Mountain, and continuing southwestwardly on the extreme height thereof to where it strikes Tennessee River, about seven miles above the old Indian town of Tallassee, crossing Porters Gap at the distance of twenty-two miles from the beginning, passing Meigs' boundary line at Thirty-one and a half miles, the Equovettly path at fifty three miles, and crossing Tennessee river at the distance of sixty-five miles from the beginning; from Tennessee river to the main ridge, and along the extreme height of the same to the place where it is called the Unicoy or Unaka mountain, striking the old trading path leading from the valley towns to the overhill towns, near the head of the west fork of Tellico River, and at a distance of Ninety-three miles from the beginning; thence along the extreme height of the Unicoy or Unaka mountain to the southwest end thereof, at the Unicoy or Unaka turnpike road, where a corner-stone is set up marked 'Ten.' on the west side, and 'N. C.' on the east side, and where a hickory tree is also marked on the south side, 'Ten. 101 M.' and on the north side 'N. C. 101 M.' being One hundred and one miles from the beginning; from thence a due course two miles and two hundred and fifty-two poles to a spruce pine on the north bank of the Hiwassee river, below the mouth of Cane Creek; thence up the said river the same course about one mile, and crossing the same to a maple marked W. D. and R. A., on the south bank of the river; thence continuing the same course due south eleven miles and two hundred and seventy-three poles to the southern boundary line of the State of Tennessee and North Carolina, making in all One hundred and sixteen miles and Two hundred and twenty-
29 three poles from the beginning, and striking the southern boundary line Twenty-three poles west of a tree in said line, marked 72 M., where was set up by said Commissioners a square post, marked on the west side 'Ten. 1821' and on the east side 'N. C. 1821', and on the south side 'G',—be, and the same is hereby ratified, confirmed and established as the true boundary line between this State and the State of North Carolina."

That the dividing line between the States of Tennessee and North Carolina is described in the North Carolina Confirmatory Act in words identical with those used in the Tennessee Confirmatory Act, but concludes with these words:

"The whole distinctly marked with two chops and a blaze on each fore and aft tree, and three chops on each side line tree, and mile marked at the end of each mile."

That the Smoky Mountain or Iron Mountain Range is between Six and Seven Thousand feet in altitude, and almost inaccessible. For this reason it was not occupied by settlers and the title did not pass from the State to settlers for a number of years after the Report of the Joint Commissioners locating the dividing line between the

States. In 1854 the State of Tennessee passed an Act opening these lands for location and sale, and subsequently lots were sold by the State of Tennessee, and in its grants to purchasers called, for the border line, the state line between the States of North Carolina and Tennessee. And also lots were sold by the State of North Carolina, calling in its grants for the state line between the States of Tennessee and North Carolina.

That on April 29th, 1892, Colonel T. E. H. McCroskey and H. M. McCroskey made an entry for the lands bounded by the Tennessee River on the one side and by the state line between North Carolina and Tennessee on the east. A grant was issued to them on May 14th, 1892, granting them the lands southwest of the Tennessee River, along the state line between North Carolina and Tennessee, and called for a crossing of the Tennessee River one-half a mile above what is known as Slick Rock Creek; thence up the Hangover Range and along the highest point thereof to the Unicoy or Unaka Mountain. And subsequently this grant or title to said lands was conveyed by the said T. E. H. McCroskey and H. M. McCroskey to one Charles Hebard.

30 That in the meantime the State of North Carolina conveyed or granted unto David W. Belding, et al., lands extending or lying southwest of the Tennessee River, and bounded on the west by the state line between North Carolina and Tennessee, the survey in the grants or deeds to said David W. Belding, et al., calling for a line crossing the Tennessee River at the mouth of Slick Rock Creek, thence up Slick Rock Creek some five or six miles; thence up a lead of what is called the Big Fodder Stack Range; and thence along the highest point of the Big Fodder Stack Range to the Unicoy or Unaka Mountain.

That these grants to said lands placed in dispute some six thousand acres of land, such dispute to be determined only by the location of the line between the two States. If the dividing line between the two States was on the top of the Big Fodder Stack range, these six thousand acres or more belonged to David W. Belding, et al., and if the said dividing line was on the Hangover Range, they belonged to Charles Hebard. Both parties claimed title, and both were cutting timber. Both States had parted with their title,—the State of Tennessee to Charles Hebard, and the State of North Carolina to David W. Belding, and those claiming through him and with him. That the said Charles Hebard, and his grantees, have since his grant, regularly paid taxes to the State of Tennessee and its subordinate municipalities.

This being the state of facts, on January 16th, 1898, Charles Hebard filed in the Circuit Court of the United States in and for the Northern Division, Eastern District of Tennessee, a Bill in Equity against David W. Belding, M. M. Belding, A. N. Belding, Henry Stix, Nathan Stix, Louis Krohn, D. W. Hyman, Mary Bragg, R. L. Cooper, J. W. Cooper and R. N. Archer, to enjoin and restrain said defendants from cutting timber on the said land, and to remove a cloud from the title to said land, setting up substantially the facts hereinbefore recited, and alleging that the true line between the

states crossed the Tennessee River about half a mile above Slick Rock Creek, and thence up along what is known as the Hangover Range, to the Unicoy or Unaka Mountain.

The defendants filed an Answer to said bill, in which the title was claimed to be in them, obtained from the State of North Carolina,
and claiming that the true state line crossed the Tennessee
31 River at the mouth of Slick Rock Creek, thence southwesterly
up said Creek some distance, then going up a lead to the Big Fodder Stack, and thence along the Big Fodder Stack to the Unicoy or Unaka Mountain. This at least was the position taken in the trial of the case, although the Answer in its original form may have differed somewhat from the course of the line indicated.

That a Master was appointed, who took a great deal of testimony, surveys were made by noted surveyors, and after full argument and due consideration the Master reported that the line was where the plaintiff, Charles Hebard, contended it was; that the call in the original Cession Act and in the Report of the joint Commissioners placed the line on the highest ridge of the mountain, and while the Big Fodder Stack and the Hangover were both high ranges of the Smoky or Iron Mountain, the Hangover Range was some five hundred feet higher than the Big Fodder Stack, and crossing the Tennessee River half a mile above Slick Rock Creek would bring them almost directly up to the highest ridge of the Hangover Range. It was also in evidence, and not disputed, that on the Northeast bank of the Tennessee River, about half a mile above Slick Rock Creek, there was a fore and aft tree marked by the joint commissioners.

That exceptions were filed to the Report of the Master by the defendants, and the case was fully argued before Judge Clark, sitting as Circuit Court Judge in and for the Northern Division, Eastern District of Tennessee, and after argument and consideration he found the same facts that the Master found, and affirmed the Master's report.

That the defendants, David W. Belding, et al., then appealed the case to the United States Circuit Court of Appeals, Sixth Circuit, and it was argued fully before Judges Taft, Lurton and Day. They rendered judgment on July 13th, 1900, affirming the judgment of the Court below,—Judge Lurton writing the Opinion of the Court.

That in the Opinion of the United States Circuit Court of Appeals, Sixth Circuit, Judge Lurton, among other things, says:

"The intention of the North Carolina Cession Act of 1789 was to make the crest of the great mountain ranges, extending across the
State of North Carolina in a southwestwardly direction, the
32 boundary line of the ceded territory. This is most evident
from even a casual reading of the boundary line therein described. The Painted Rock on the French Broad River is a natural monument of great notoriety. From that point the calls in the Cession Act are "thence along the highest ridge of said mountain to the place where it is called the Great Iron or Smoky Mountain; thence along the main ridge of said mountain to the place where it is called Unicoy or Unaka Mountain, between the Indian towns, Cowee and Old Chota."

The part of the great mountain range called "Smoky Mountain" is well known, as is also that part of the same range southwest of Smoky Mountain, called "Unicoy or Unaka Mountain." There is no trouble about the location of these two great natural monuments in the line. The distance between the two is not less than fifty miles, and the only call which is locative of the line between the two is that the line is to run along "the extreme height of the said range, heretofore called the "Great Iron or Smoky Mountain" to that part of the range or ridge called the "Unicoy or Unaka Mountain."

Judge Lurton's opinion is of considerable length. The case is reported fully in Belding vs. Hebard, 103 Federal Reporter, 532.

That this decision settled the last remaining portion of the line between the States of Tennessee and North Carolina that was in dispute, and by decree removed the cloud from the Charles Hebard title, and enjoined and restrained the defendants, David W. Belding, et al., from cutting timber on said lands.

That on August 13, 1900, a petition for rehearing was filed, which petition after due consideration, was on October 2nd, 1900, denied by said Circuit Court of Appeals.

That attached hereto and made a part hereof, marked Exhibit "A" is a true and correct copy of the entire record of the case of Charles Hebard against David W. Belding, et al., properly certified by the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

That from the Decree filed on July 13th, 1900, there was
33 no appeal under Stevenson vs. Fain, reported in 195 United States Reports, page 166.

That the Decree affirming the judgment of Judge Clark was entered in the United States Circuit Court of Appeals for the Sixth Circuit on July 13th, 1900, but the decision was reached before Judge Taft resigned from the bench some time in the early part of March, 1900, and announced to the parties.

That after the said decree was entered, to wit: On July 16th, 1900, Charles Hebard, in whom said final decree vested the title to the lands in dispute, sold and by deed in escrow conveyed to P. C. Blaisdell, et al., all of his right, title and interest in and to the said lands, and on January 28th, 1901, the said P. C. Blaisdell, et al., sold and conveyed by deed in escrow all of their right, title and interest in and to the said lands to the Smoky Mountain Land, Lumber & Improvement Company, a corporation chartered under the laws of the State of Delaware but doing business in Monroe County, Tennessee,—which conveyances are recorded in the Register's Office of Monroe County, Tennessee. That both of said deeds, to wit: the deed from Charles Hebard to P. C. Blaisdell, et al., and from P. C. Blaisdell, et al. to the Smoky Mountain Land, Lumber & Improvement Co. were delivered to the said Smoky Mountain Land, Lumber & Improvement Company on January 9th, 1903.

That on May 6th, 1907, the Smoky Mountain Land, Lumber & Improvement Company conveyed all of its rights, title and interest in and to the said lands in dispute to the Babcock Lumber & Land Company, a Corporation chartered under the laws of the State of

Maine, but doing business in Monroe County, Tennessee, the petitioner in this case, which deed is also recorded in the Register's Office of Monroe County, Tennessee.

That long after the Decree of July 13th, 1900 vesting the title to said lands in Charles Hebard, to wit: on March 3rd, 1903, the said David W. Belding, M. M. Belding, A. N. Belding, Henry Stix, Nathan Stix, Louis Krohn, D. W. Hyman, Mary Bragg, J. W. Cooper, R. L. Cooper, and R. N. Archer sold and conveyed all their right, title and interest in and to said lands to William R. Hopkins, et al.

34 A Bill of Review has been filed by permission of the Court by William R. Hopkins, et al. in the case of Hebard vs. Belding, et al., since the finding of the map of the Commission of 1821, as alleged in Paragraph 8 of complainant's bill, alleging as the reason therefor that said map establishes the line between the States as contended by the complainant in the present suit. Answer has been filed, denying this allegation, testimony taken, and argument postponed from time to time at the instance of William R. Hopkins, et al., said William R. Hopkins, et al., expecting to further postpone the argument upon the Bill of Review until the decision of this present case. If this court shall establish the line as alleged by complainant, it is more than probable that the Circuit Court in Tennessee will adjudicate that to be the line in the Bill of Review. This is one of the reasons why your petitioner is an interested party in the present suit.

35 That the line claimed to be in dispute in the Bill filed by the State of North Carolina against the State of Tennessee in the Supreme Court of the United States, is the same identical line established by the Decree in the suit between Charles Hebard and David W. Belding, et al. in the Circuit Court of Appeals, Sixth Circuit, on July 13th, 1900, and binds said parties and their privies on the subject matter in dispute,—which is the establishment of the line between the States of Tennessee and North Carolina.

That the States of North Carolina and Tennessee being the grantors to the parties to that suit, are privies to said parties, and bound by the decision rendered in said suit.

That it appears by the record in the suit between Charles Hebard and David W. Belding, et al., that one C. B. Mathews was attorney for the defendants in that suit; and that he is now associated with the Attorney General of the State of North Carolina in the present suit brought by the State of North Carolina against the State of Tennessee in the Supreme Court of the United States; and it is fair to conclude that the Act of Assembly ratified February 14th, 1909, authorizing the Governor of the State of North Carolina to institute and prosecute in the name of and on behalf of said State, in the Supreme Court of the United States, such actions and proceedings as might be necessary to establish and protect the boundary lines between the State of North Carolina and adjoining states, was obtained by and through the same parties defendant to the original suit, in order to review the decision of the Circuit Court of Appeals in the original suit,—a thing which could not be done by appeal or

on certiorari, and ought not to be countenanced or permitted by this court. Besides, it was unnecessary to obtain an Act of Assembly of the State of North Carolina in order to bring the present suit, as this Court has jurisdiction, under the Constitution, in matters of controversy between two States, and the State of North Carolina, by Act of Assembly, cannot either extend or reduce the jurisdiction of this Court.

That all of the parties who had purchased land from the State of Tennessee and from the State of North Carolina, were included in the original suit between Charles Hebard and David W.
36 Belding, et al., Charles Hebard owning all of the land in dispute, lying Southwest of the Tennessee River and bounded on the East by the state line between the States of North Carolina and Tennessee, extending from the Tennessee River to the Unicoy or Unaka Mountain, and the defendants in the Bill which they filed against him claiming to own, or at least having purchased from the State of North Carolina all its right, title and interest in and to the land in dispute, so that the settlement or adjudication of the said case in the Circuit Court of Appeals in and for the Sixth Circuit settled and adjudicated every interest involved or affected by the Decree of July 13th, 1900. And so far as the balance of the dividing line between the two States, Northeast of the Tennessee River and Southwest of the Unicoy or Unaka Mountain is concerned, it has all been established, ettled and adjudicated, and there are no controversies over it. The land in dispute is between seven and nine miles long, and is valuable only for the timber upon it, no minerals having been discovered upon it, and it being too mountainous to be of any value as farming lands.

Your petitioner therefore, showing that it is the present owner of the lands in dispute; that it purchased said lands after the Decree of the United States Circuit Court of Appeals for the Sixth Circuit was entered, with no knowledge, notice or intimation that this present Bill would be filed; that it is vitally interested in the outcome of this suit, because if the Decree in this case should be different from that in the United States Circuit Court of Appeals, for the Sixth Circuit, it would put a cloud upon its title, if not seriously affect it or destroy it; and further showing that the dividing line between the said States of North Carolina and Tennessee, set forth in the present Bill as being in dispute, has already been settled and established by a court of competent and concurrent jurisdiction,—asks to be permitted to intervene in this case, and to defend as against the State of North Carolina.

And it will ever pray, etc.

BABCOCK LUMBER & LAND COMPANY,
By J. FRANKLIN SHIELDS,
WILLIAM A. STONE,
Its Attorneys.

37 STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, the undersigned authority, personally appeared T. R. Babcock, who, being duly sworn according to law, deposes and says that he is Secretary & Treasurer of the Babcock Lumber & Land Company; that the facts set forth in the foregoing petition are true as of record; that they are true to the best of his knowledge and belief, and petitioner expects to be able to prove them upon the trial of this case.

T. R. BABCOCK.

Sworn and subscribed before me this 24 day of April 1909.

ALICE M. GODFREY, [SEAL.]
Notary Public.

My commission expires Jan. 19, 1913.

To the Attorney General of the State of North Carolina:

You are hereby notified that the foregoing Motion and Petition will be presented and filed in the Supreme Court of the United States, at twelve o'clock, noon, on the 3d day of May, A. D., 1909.

J. FRANKLIN SHIELDS,
WILLIAM A. STONE,
Attorneys for Petitioner.

To the Attorney General of the State of Tennessee:

You are hereby notified that the foregoing Motion and Petition will be presented and filed in the Supreme Court of the United States, at twelve o'clock, noon, on the 3d day of May, A. D., 1909.

J. FRANKLIN SHIELDS,
WILLIAM A. STONE,
Attorneys for Petitioner.

38 STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Before me, the undersigned authority, personally appeared Henry P. Erdman, who being duly sworn according to law, says that he served the foregoing Motion and Petition upon T. W. Bickett, the Attorney General of the State of North Carolina, on the 26th day of April, 1909, by producing to him *of them* a true certified copy of the foregoing Motion and Petition, and notifying him of the contents thereof.

HENRY P. ERDMAN.

Sworn and subscribed before me this 28th day of April, 1909.

ANNA H. HARE,
Notary Public.

Commission expires March 12, 1911.

39 In the Supreme Court of the United States, October Term, 1908.

No. 13, Original.

STATE OF NORTH CAROLINA, Complainant,
vs.
STATE OF TENNESSEE, Defendant.

I, Chas. T. Cates, Jr., Attorney General of the State of Tennessee, do hereby accept service of a motion to be submitted in the above entitled cause on the 3rd day of May, 1909, by Babcock Lumber & Land Co., for leave to file a petition of intervention in said cause, to the end that it may be made a party defendant thereto:

And I do hereby acknowledge having received a copy of said petition and after reading said petition have no objection to said Babcock Lumber & Land Co. being made a party defendant to the above entitled cause, provided the same be done without prejudice to the rights and interests of the defendant, State of Tennessee.

This 26th day of April, 1909.

(Signed) CHARLES T. CATES, JR.,
Attorney General.

Endorsed: Supreme Court U. S. October Term, 1908. Term No. 13, Original. The State of North Carolina, Complainant, vs. The State of Tennessee. Motion and petition of Babcock Lumber & Land Company for leave to intervene, notices and proof of service.

40 And afterwards to-wit on the 17th day of May, A. D. 1909, the following order appears of record, viz.:

41 Supreme Court of the United States, October Term, 1908.

No. 13, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

On consideration of the motion of Babcock Lumber & Land Company for leave to intervene herein,

It is now here ordered by the Court that said motion be, and the same is hereby, denied, but leave is hereby granted to counsel for said company to file a printed brief herein as amicus curiae.

May 17, 1909.

42 And afterwards, to-wit, on the 24th day of May, A. D. 1909, the following entry appears of record, viz.:

43 Supreme Court of the United States, October Term, 1908.

No. 13, Original,

STATE OF NORTH CAROLINA, Complainant,
vs.
STATE OF TENNESSEE.

The motion for leave to file an amended bill of complaint herein was submitted to the consideration of the Court by Mr. Theodore F. Davidson, Mr. C. B. Matthews and Mr. T. W. Bickett in support of the same, and Mr. Charles T. Cates, Jr., in opposition thereto.

May 24, 1909.

Which said motion is in the words and figures following, viz:

44 In the Supreme Court of the United States, October Term, 1908.

No. 13, Original Jurisdiction in Equity.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE, Defendant.

Notice of Motion of Leave to File Amended Bill of Complaint.

To the State of Tennessee:

Notice is hereby given that the State of North Carolina, the complainant in the above-entitled suit, will, on Monday, the 17th day of May, 1909, make a motion in said suit in the Supreme Court of the United States for leave to file an amended bill of complaint, a copy of said amended bill being hereto attached.

May 3, 1909.

T. W. BICKETT,
Attorney General of North Carolina.

C. B. MATTHEWS,
THEO. F. DAVIDSON,
Counsel.

45 In the Supreme Court of the United States, October Term, 1908.

No. 13, Original.

STATE OF NORTH CAROLINA, Complainant,
vs.
STATE OF TENNESSEE, Defendant.

Motion for Leave to File Amended Bill of Complaint.

Now comes the State of North Carolina, by T. W. Bickett, its Attorney General, and Theo. F. Davidson, Esq., solicitor (representing, with the Attorney General, the State of North Carolina), and moves the court for leave to file the bill of complaint herewith exhibited, in a controversy which has arisen between said States touching the boundaries and jurisdiction.

T. W. BICKETT,
Attorney General of North Carolina,
THEO. F. DAVIDSON,
Solicitors for Complainant.

C. B. MATTHEWS,
Of Counsel.

[Endorsed:] Supreme Court U. S., October term, 1908. Term No. 13, original. State of North Carolina, complainant, *vs.* State of Tennessee. Motion for leave to file amended bill of complaint.

46 The objections of the defendant to motion for leave to file amended bill are in the words & figures following, viz:

47 Supreme Court of the United States, October Term, 1908.

No. 13, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE, Defendant.

Objections of Defendant to Complainant's Motion for Leave to File the Amended Bill Exhibited Therewith.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

On the — day of March, 1909, the complainant, the State of North Carolina, was by this honorable court granted leave to file against the State of Tennessee an original bill in equity, and on the — day of April, 1909, the State of Tennessee, through her Attorney General, entered her appearance to said bill, obtained a copy thereof, and

was given until the first day of the next term of this court to make defense thereto.

The complainant, State of North Carolina, by her said bill to which reference is here made, seeks to have determined an alleged dispute in respect of a part of the boundary between said States, the scope of the disputed boundary being specifically described and restricted to that part of the line between said States, as follows:

"Between a point about a mile northeast of the Tennessee
48 River and the junction of the Big Fodderstack and the Hangover leads, about nine miles southwest thereof" (see original bill, p. 10); but now defendant shows that on May 12, 1909, she was notified by counsel representing complainant that on Monday, the 25th day of May, 1909, a motion would be submitted to this honorable court for leave to file an amended bill of complaint, and a copy of said amended bill accompanied such notice.

Now comes the defendant, State of Tennessee, and respectfully submits to this honorable court the following objections or exceptions to said amended bill (so styled) and the filing thereof:

First. Said amended bill in the form submitted is unknown to the rules of this court and the well-recognized rules of equity practice.

Second. Said amended bill does not in any way refer to the original bill, nor give the substance thereof, nor set out or particularize the matters of amendment sought to be incorporated into or engrafted upon the original bill, so that the court and the defendant may see and understand the changes in or additions to the allegations of the original bill.

Third. Neither said amended bill (so styled) nor the affidavit appended thereto shows any reason for altering the allegations of the original bill or making any addition thereto, nor is it shown that the matters of amendment were unknown to complainant at the time the original bill was filed.

Fourth. The paper submitted and offered to be filed is not an amended bill, according to the well-recognized rules of equity practice, but is in fact and effect a new and independent bill, setting out verbatim the first five paragraphs of the original bill, then for the
sixth paragraph of the original bill substituting the seventh
49 paragraph thereof, into which without specification, have been incorporated additional allegations, and wherein certain allegations of the original bill have been altered in a material manner; then follows the sixth paragraph of the original bill as the seventh paragraph of the so-called amended bill; then follows, as the eighth paragraph of the amended bill (so styled), a large part of the eighth paragraph of the original bill, but changing without setting out or specifying the changes, certain material allegations of the original bill; these changes and alterations of the original bill can be ascertained only by comparing word for word the allegations of the eighth paragraph of the original bill with the eighth paragraph of the amended bill sought to be filed; and this objection applies to the changes made in the seventh paragraph of the origi-

nal bill; some of these additions and material changes will be specifically set out in the brief filed in support of these objections.

Wherefore, for the reasons above stated and for the further reason that if said amended bill is permitted to be filed defendant cannot with any degree of certainty understand the particular allegations which may be material and necessary for her to answer, defendant respectfully submits that said amended bill (so styled) should not be allowed to be filed in the form submitted.

CHARLES T. CATES, JR.,
Attorney General of Tennessee.

50 And afterwards, to wit, on the first day of June, A. D. 1909, the following order appears of record, viz:

51 Supreme Court of the United States, October Term, 1908.

No. 13, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

On consideration of the motion for leave to file an amended bill of complaint herein, and of the argument of counsel thereupon had as well in support of as against the same,

It is now here ordered by the Court that said motion be, and the same is hereby, granted.

June 1, 1909.

52 And on the same day, to wit, the first day of June, A. D. 1909, the Amended Bill was filed in words and figures following, viz:

53 In the Supreme Court of the United States, October Term, A. D. 1908.

No. 13, Original Jurisdiction in Equity.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE, Defendant.

Amended Bill of Complaint of the State of North Carolina Against the State of Tennessee.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The State of North Carolina, one of the United States of America, brings this its bill of complaint against the State of Tennessee, also

one of the United States of America, and thereupon your oratrix complains and alleges:

I. That this suit is brought under and in pursuance of a law of the State of North Carolina entitled "An act to amend chapter 113, section 5315, of the Revisal of 1905," ratified February 4, 1909, which act empowers the Governor of the State of North Carolina to institute and prosecute, in the name of and in behalf of said State, in the Supreme Court of the United States, such actions and proceedings as might be necessary to establish and protect the boundary lines between the States of North Carolina and adjoining States, and is brought and instituted under the authority and by the direction of the Governor of the State of North Carolina to the Attorney General of said State.

54 II. That the boundary between the States of North Carolina and Tennessee is disputed and in controversy in so far as the same is hereinafter set out, and that the State of Tennessee has lately been making grants of lands within the disputed territory, and exercising sovereignty and jurisdiction thereover, and interfering seriously with the State of North Carolina in the undisputed exercise of its sovereignty and jurisdiction over the lands in the said disputed territory, which sovereignty and jurisdiction of said State of North Carolina was, up to the year 1892, exercised without let, hindrance, or controversy.

III. That the territory constituting the present State of Tennessee was ceded to the United States by act of the Legislature of North Carolina in 1789 (said act being found in the Revised Statutes of 1837 of said State, vol. 2, p. 171); and in said act of cession the boundary line is described from the French Broad River westwardly as follows, to wit: "Thence along the highest ridge of the said mountain" (Iron Mountain) "to the place where it is called the Great Iron or Smoky Mountain; thence along the extreme height of said mountain to the place where it is called Unicoi or Unaka Mountain, between the Indian towns of Cowee and Old Chota; thence along the main ridge of said mountain to the southern boundary of this State"; that the deed made by the State of North Carolina in pursuance of the above-mentioned act, which was dated the twenty-fifth day of July, 1790, and which was accepted by an act of Congress ("Laws of United States," vol. 2, p. 85, old edition of 1815), follows the same description, as does also the Constitution of the State of Tennessee (article 1, section 31), declaring the boundaries of said State.

IV. That in the year 1796 the General Assembly of the State of North Carolina passed an act (Revised Statutes, 1837, vol. 2, p. 93) appointing commissioners "to settle the boundary line between this State and the State of Tennessee; and these commissioners,

55 acting under said appointment and a similar authority and appointment by the State of Tennessee, "settled" this line from the east to a point on the Great Iron or Smoky Mountain west of the Pigeon River, marked by a stone set up on the north side of the Cataloochee turnpike road, about due north from the present town of Waynesville, in Heywood County, North Carolina, and

about sixty-five miles east of the point where the Tennessee River passes through said mountain range.

V. That afterwards, to wit, in the year A. D. 1819, the General Assembly of the State of North Carolina passed an act (Revised Statutes (1837), vol. 2, p. 94) authorizing the appointment of commissioners "to accurately run, distinctly mark, and permanently establish" the boundary line between the States of North Carolina and Tennessee from the point where the line of the former commissioners stopped to the western terminus, and about the same time the State of Tennessee enacted a similar act, and in pursuance of said acts the Governor of Tennessee appointed three commissioners, to wit, A. Smith, Isaac Allen, and Simeon Perry, and the Governor of North Carolina appointed James Mebane, M. Stokes, and R. Love as commissioners on behalf of the State of North Carolina, to accurately run, distinctly mark, and permanently establish the boundary line between the said States from the point where the former commissioners stopped to its western terminus; and thereafter the said commissioners, acting jointly, surveyed, located, and marked said State line between the points last above designated, and in August, 1821, filed with each State a report and map setting out that part of the State line which they had so surveyed, located, and marked, and, as your oratrix is informed and believes, filed also the field-notes of the surveyors whom the said commissioners had employed to assist in making the said surveys and maps, and that after the filing of said reports, maps, and field-notes an act
56 was passed by the General Assembly of the State of North Carolina in the year 1821 (Revised Statutes (1837), vol. 2, p. 96), and a similar act was passed by the Legislature of the State of Tennessee at about the same time, and each of said acts adopted and confirmed the line run by the said commissioners under the acts aforesaid and shown by the map so filed, and established and described the same as follows: "Beginning at a stone set up on the north side of the Cataloochee turnpike road, marked on the west side 'Ten. 1821,' and on the east side 'N. C. 1821,' and running thence on a southwestwardly course to the Bald Rock on the summit of the Great Iron or Smoky Mountain, and continuing southwestwardly on the extreme heights thereof to where it strikes Tennessee River about seven miles above the old Indian town of Tallassee, crossing Porter's Gap at a distance of twenty-two miles from the beginning, passing the Meigs boundary line at thirty-one and a half miles, the Equonautley Path at fifty-three miles, and crossing Tennessee River at a distance of sixty-five miles from the beginning; from the Tennessee River to the main ridge and along the extreme height of the same to the place where it is called Unicoi or Unaka Mountain, striking the old trading path from the valley towns to the over-hill towns near the head of the west fork of Tellico River, at the distance of ninety-three miles from the beginning; thence along the extreme heights of the Unicoi or Unaka Mountain to the southwest end thereof at the Unicoi or Unaka turnpike road, where a cornerstone is set and marked 'Ten.' on the west side and 'N. C.' on the east side and where a hickory tree is also marked on the south

side 'Ten. 101 m.' and on the north side 'N. C. 101 m.,' being 101 miles from the beginning;" and thence by a general southerly course to the southern boundary line of the States of Tennessee and North Carolina, where was set up by said commissioners a square post, marked on the west side "Ten. 1821," and on the east side "N. C. 1821," and on the south side "G."

57 VI. That said boundary line between the States of North Carolina and Tennessee may be generally described as following the main ridge or watershed of the Allegheny Mountain range, which has many local names, such as the Great Iron or Smoky Mountain and Unaka or Unicoi Mountain, but between the "extreme height" of the Great Iron or Smoky Mountain and the "main ridge" of Unaka or Unicoi Mountain the Tennessee River breaks through the mountain in its northwesterly course, and that part of the State line which descends from the extreme height of the Great Smoky Mountain to Tennessee River, crosses the river, and ascends to the main ridge of Unaka Mountain, and thence to the point mentioned and designated in the report of the commissioners who made the survey in 1821, as set forth in paragraph five hereof, "at the Unicoi or Unaka turnpike road, where a cornerstone is set and marked 'Ten.' on the west side and 'N. C.' on the east side, and where a hickory tree is also marked on the south side 'Ten. 101 m.,' and on the north side 'N. C. 101 m.,' being 101 miles from the beginning," has fallen into dispute. The line having been surveyed through a heavily timbered mountain country, at a time when that part of it was still occupied by the Cherokee Indians, few of the mountains and streams had names known to the commissioners which could be indicated upon their maps, and the line had to be marked upon the ground by marks made upon trees. Many of these marks, designated in the report of the commissioners and thereafter known as "State-line marks," which consisted of two hacks above a blaze, have been destroyed by the ravages of time and the ignorance and recklessness of man, and some ancient marks on a line running about half a mile northeast of the Tennessee River and on the Hangover Ridge southwest of said river, which are not in fact State-line marks, have been mistaken by surveyors for State-line marks, with the result that dispute and controversy have arisen as to the true location of the State line between the extreme

58 height of the mountain northeasterly of Tennessee River and the main ridge thereof southwesterly of the river, as aforesaid. Your oratrix has always believed and acted upon the belief, and alleges the fact to be, that the line between these points descends from the extreme height of the mountain northeast of the river to the river, crosses the river to a point in the southwest bank thereof just west of the mouth of the stream known as Slick Rock Creek, follows the creek a short distance to a ridge leading up to the main ridge, follows said ridge up to the summit, known as Big Fodderstack Mountain and follows the main ridge thence to the junction of the Big Fodderstack and Hangover leads, and thence follows the main ridge of Unaka Mountain southwesterly. Up to the year 1892 said line as claimed by your oratrix has been conceded to be the true line by the residents and surveyors of both

States in that vicinity, and said line is the line fixed and located by said commissioners and marked by them. Your oratrix states that the State of Tennessee recognized this line as the State line in the year 1835, when it laid out the Ocoee land district, and fixed said line as the eastern boundary of said district and of its county of Monroe; that after the removal of the Cherokee Indians from this territory the State of North Carolina, in the year 1853, opened these lands to its citizens for entry, and thereafter issued a large number of grants running to said line as the State line, collected taxes upon all of the lands running to said line from the year 1860 to the present time, and exercised in all respects its jurisdiction over all of the lands running to said line; that during the entire period from 1821 to 1892 the State of Tennessee never granted any lands by description which called for any other location of the State line than the one claimed by your oratrix; that about the year 1892 the State of Tennessee issued grants to sundry persons for the land lying south of Tennessee River and between the State line as claimed by your oratrix and a line beginning at the junction of the
59 Fodderstack lead with the Hangover lead and running northeasterly along the Hangover lead to Hangover Mountain and northerly from Hangover Mountain to Tennessee River, and described in said grant the last-described line from the junction of the two leads to Tennessee River as the State line between Tennessee and North Carolina, and also issued grants for the lands lying at and near the head of Tellico River east of line as claimed by your oratrix. Your oratrix still further states that since 1892 the timber upon the lands in the vicinity of Tennessee River has become valuable; that during the past three or four years the State of Tennessee has undertaken to exercise jurisdiction over the disputed territory and to collect taxes thereon; that unseemly strife has resulted from the assertion by each State of jurisdiction over the same territory; that the construction of a railroad along Tennessee River now makes the land in dispute the natural center of large industrial developments, calling for the continuous exercise of all the functions of government, none of which are possible of exercise in an orderly manner until the true location of this part of the State line has been finally determined.

VII. That ever since the confirmation of said survey, maps, reports, and location of said line by the acts of the respective States in 1821, as aforesaid, until 1892, the respective States of North Carolina and Tennessee have exercised sovereignty and jurisdiction in all respects and have made surveys and grants of lands in accordance with the State line as located by the said last-named commissioners, and up to the line as laid down and determined by them and no further, and have recognized said line as the true line, and the said line has been recognized by the Congress of the United States and by the United States Government in organizing its courts, making its appointments, and administering its laws in the respective States, and the United States Government, through its Coast Survey and its Geological Survey, for Government pur-
60 poses, went over and identified the survey and line as located in 1821 by the said commissioners on behalf of the States

of North Carolina and Tennessee from surveys and other information obtained on the ground in the years 1884, 1885, and 1892, and in the year 1892 caused an official topographical map of the said territory to be constructed, showing the line as located by the said commissioners, and in the year 1904 caused the said topographical map to be revised without changing a part of the State line which is in dispute herein.

VIII. That when contests first arose from the granting by the State of Tennessee to citizens of Tennessee of lands long previously granted by the State of North Carolina to her own citizens it was discovered, after the most diligent search in the archives of the State of North Carolina at Raleigh and of the State of Tennessee at Nashville, that neither of the original maps made by the commissioners of 1821 showing the location of the State line as located by them nor the field-notes made by the surveyors in 1821 could be found; that the capitol building at Raleigh, North Carolina, which was then and now is the capital of the State, was destroyed by fire about the year 1832, at which time many of the records of the State of North Carolina were destroyed, which records may have included said map and field-notes; that, as your oratrix is informed and believes, some time in the year 1903 or the year 1904 there was discovered by the State archivist of the State of Tennessee, among papers supposed to be worthless, the original map filed with the State of Tennessee by the commissioners of 1821, showing the line run, located, and marked by them and adopted by the States of North Carolina and Tennessee as the State line, as aforesaid; that prior to the finding of said map surveyors had mistaken certain ancient marks for State-line marks, had mistaken which is the main ridge southwest of Tennessee River, because from the Tennessee and Checah rivers certain spurs lead to the main
61 ridge southwesterly of Tennessee River, and since the finding of said map have confused Slick Rock Creek with Checah River, which is about two miles from said creek, but the said map shows the State line to be where your oratrix has always claimed it to be; but the State of Tennessee, notwithstanding the discovery of said map and the proof which it furnishes of the true location of said State line, nevertheless refuses to recognize said line as fixed by said map and by said commissioners in 1821, but claims a line to the eastward of the true line, taking in a part of the State of North Carolina about twenty miles long and three and one-half miles wide at its widest part, and continues to demand taxes thereon and to exercise jurisdiction thereover; and by reason of the premises said line, between a point about a mile northeast of the Tennessee River and the point at Unaka Turnpike road, as hereinbefore stated, about twenty miles southwest thereof, has become confused, uncertain, and the subject of contention, and your oratrix is without remedy, except in equity in this court to established and confirm its sovereignty, jurisdiction, and property rights over a part of the territory of the complainant whose rights therein were undisputed for more than seventy years.

Wherefore your oratrix prays that the said defendant may be required to make full and perfect answer to the matters set forth in this

bill, and that upon final hearing of this cause the boundary line herein claimed may be ascertained and established by the decree of this court; that the rights of property, of possession, jurisdiction, and sovereignty of your oratrix thereto may be established and quieted and the defendant forever enjoined and restrained from disturbing your oratrix, her officers or people, in the full possession and enjoyment of the same, and for such other and further relief as to the court may seem meet and consistent with equity and good conscience.

May it please your honors to grant unto your oratrix a writ of subpœna, directed to the Governor and the Attorney General
62 of the defendant, commanding them, on a day certain to be named and under a certain penalty, to be and appear in your honorable court, then and there to answer on behalf of the defendant all and singular the premises, and on behalf of the defendant to stand to, perform, and abide such further orders, directions, and decree as may be made against the defendant; and your oratrix will ever pray.

T. W. BICKETT,
Attorney General of the State of North Carolina.

THEO. F. DAVIDSON,
C. B. MATTHEWS,
Of Counsel.

UNITED STATES OF AMERICA,
State of North Carolina:

T. W. Bickett, being first duly sworn, deposes and says that he is the duly elected, qualified and acting Attorney General of the State of North Carolina, and as such is authorized to file the foregoing amended bill; that he has read the said bill, and knows the contents thereof, and that the same is true as he verily believes.

T. W. BICKETT.

Subscribed and sworn to before me this the — day of May, 1909. Thos. S. Kenan, clerk of the Supreme Court of the State of North Carolina.

Witness my hand and official seal.

[Seal of the Supreme Court of the State of North Carolina.]

THOS. S. KENAN, *S. C. C.*

[Endorsed:] Supreme Court U. S., October term, 1908. Term No. 13, Original. State of North Carolina, complainant, vs. State of Tennessee. Amended bill of complaint. Filed June 1, 1909.

63 And afterwards, to wit, on the 11th day of October A. D. 1909, motion for leave to file Answer and Cross-Bill was filed in words and figures following, viz.:

64 In the Supreme Court of the United States, October Term, 1909.

No. 7, Original.

STATE OF NORTH CAROLINA, Complainant,
vs.
STATE OF TENNESSEE, Defendant.

Motion for Leave to File Answer and Cross-bill.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The State of Tennessee, defendant, by Malcolm R. Patterson, Governor, and Charles T. Cates, Jr., Attorney General, humbly shows as follows, to-wit:

That the State of North Carolina filed her original bill in equity against the State of Tennessee, in this Honorable Court, on the — day of March, 1909, and on the — day of May, 1909, said State of North Carolina was given leave to file, and did file, an amended bill against the State of Tennessee, praying, among other things, for a decree defining and marking part of the boundary line between said States according to the contention of the State of North Carolina in her said bill set out; that the State of Tennessee, by her Attorney General, has duly entered her appearance in said cause, and was granted leave *leave* to make defense on or before the first day of the October Term, 1909, of this Court.

The State of Tennessee herewith humbly presents her answer to said bills of complaint, and, according to the usual practice in such cases, accompanies her said answer by a cross-bill making the State of North Carolina defendant thereto. She humbly prays that

65 her said answer and cross-bill may be filed, and that subpœna may be allowed to issue out of this Honorable Court directed to the Governor of the State of North Carolina, and to the Honorable T. W. Bickett, Attorney General of said State, commanding them to appear and answer said cross-bill upon a day to be named by this Honorable Court.

CHARLES T. CATES, JR.,
Attorney General of Tennessee.

Endorsed: Supreme Court U. S., October Term, 1909. Term No. 7, Original. The State of North Carolina, complainant, vs. The State of Tennessee. Motion for leave to file Answer and Cross-Bill Filed Oct. 11th, 1909.

66 And on the same day, to wit, on the 11th day of October A. D. 1909, the following entry appears of record, viz.:

67 Supreme Court of the United States, October Term, 1909.

No. 7, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

On motion of Mr. Charles T. Cates, Jr., of counsel for the defendant, leave is hereby granted to file answer and cross-bill of said defendant.

October 11, 1909.

Which said Answer and cross-bill is in the following words viz.:

68 In the Supreme Court of the United States, October Term, 1909.

No. 7, Original.

STATE OF NORTH CAROLINA, Complainant,
vs.
STATE OF TENNESSEE, Defendant.

Answer and Cross-Bill.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Answer.

The answer of the State of Tennessee, one of the United States of America, by Malcolm R. Patterson, Governor, and Charles T. Cates, Jr., Attorney-General, by leave of this Honorable Court, to the original and amended bills of complaint exhibited against said State of Tennessee by the State of North Carolina, by and through her Attorney-General, the Honorable T. W. Beckett.

This defendant, now and at all times hereafter saving to herself the benefit of every exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in
69 the said bills contained, for answer thereto, or so much thereof as this defendant is advised is material or necessary for her to answer, answering says:

I.

It is true that the territory now belonging to defendant State of Tennessee, and over which she exercises, and has the right to exercise, jurisdiction, was formerly a part of complainant State of North Carolina, but was ceded by complainant to the United States in

1789 by an act of the General Assembly of complainant, entitled "An act for the purpose of ceding to the United States of America, certain western lands therein described," said territory so ceded and now constituting defendant State of Tennessee being described in said act of cession as follows:

"All right title and claim which this State has to the sovereignty and territory of the lands situate within the chartered limits of this State, west of a line beginning on the extreme height of the Stone Mountain, at the place where the Virginia line intersects it, running thence along the extreme height of the said mountain, to the place where Wautauga River breaks through it; thence a direct course to the top of the Yellow Mountain, where Bright's Road crosses the same, thence along the ridge of said mountain between the waters of Doe River and the waters of Rock Creek, to the place where the road crosses the Iron Mountain, from thence along the extreme height of said mountain, to where Nolichucky River runs through the same, thence to the top of the Bald Mountain, thence along the extreme height of the said mountain to the Painted Rock, on French Broad River, thence along the highest ridge of the said mountain, to the place where it is called the Great Iron or Smoky Mountain, thence along the extreme height of the said mountain, to the place where it is called Unicoy or Unaka Mountain, between the Indian towns of Cowee and Old Chota, thence along the main ridge of the said mountain, to the southern boundary of this State."

70 The deed executed by complainant, carrying into effect said act of cession, was dated on the 25th day of February, 1790, and was accepted by an act of Congress, entitled "An act to accept a cession of the claims of North Carolina to a certain district of Western Territory," passed and approved on the 2d day of April, 1790.

On the 6th day of February, 1796, the people of the territory so ceded to the United States, through their representatives, organized the defendant State of Tennessee, and ordained and established a constitution wherein (Declaration of Rights, sec. 32) the boundaries of defendant State of Tennessee was described as set out in said act of cession, and declared to be as follows:

"Beginning on the extreme height of the Stone Mountain, at the place where the line of Virginia intersects it, in latitude thirty-six degrees and thirty minutes north; running thence along the extreme height of the said mountain to the place where Wautauga River breaks through it; thence a direct course to the top of the Yellow Mountain, where Bright's Road crosses the same; thence along the ridge of said mountain between the waters of Doe River and the waters of Rock Creek to the place where the road crosses the Iron Mountain; from thence along the extreme height of said mountain to the place where Nolichucky River runs through the same; thence to the top of the Bald Mountain; thence along the extreme height of said mountain to the Painted Rock, on French Broad River; thence along the highest ridge of said mountain, to the place where it is called the Great Iron or Smoky Mountain; thence along the extreme height of said mountain to the place where it is called

Unicoi or Unaka Mountain, between the Indian towns of Cowee and Old Chota; thence along the main ridge of said mountain to the southern boundary of this State, as described in the act of cession of North Carolina, to the United States of America; and that all the territory, lands, and waters lying west of the said line, as before mentioned, and contained within the chartered limits of the
71 State of North Carolina, are within the boundaries and limits of this State, over which the people have the right of exercising sovereignty and right of soil so far as is consistent with the Constitution of the United States; recognized the Articles of Confederation, the Bill of Rights and Constitution of North Carolina, the Cession Act of the said State, and the ordinance of the late Congress for the government of the territory northwest of the Ohio; provided nothing herein contained shall extend to affect the claim or claims of individuals, to any part of the soil which is recognized to them by the aforesaid Cession Act."

And by an act of Congress, entitled "An act for the admission of the State of Tennessee into the Union," approved June 1, 1796, defendant State of Tennessee was "declared to be one of the United States of America, on an equal footing with the original States, in all respects whatever by the name and title of the State of Tennessee."

II.

It is also true that in the year 1796 the General Assembly of North Carolina passed an act appointing Commissioners "to fix and permanently establish the boundary line between the two States, and the same to mark and ascertain, as distinctly as possible, agreeable to the true intent and meaning of said boundary line between this State and the State of Tennessee, as described in 'An act for the purpose of ceding to the United States of America certain western lands therein described;' " and by this act Joseph McDowell, Musendine Matthews and David Vance were named Commissioners; and it is true that these Commissioners, about the year 1799, did run and mark the northern part of the western boundary of complainant—being the eastern boundary of defendant—to a point on the north side of the Catalouchee Turnpike Road, leaving the remainder of the line to the southern boundary of the States unmarked, but
72 the necessity for a definite location and marking on the ground of the boundary line between the two States becoming evident to both States, the complainant, by an act of her General Assembly passed in 1819, provided for the appointment of three Commissioners to meet Commissioners to be appointed by defendant, and with them "to settle, run and mark the boundary line between this State (meaning complainant State of North Carolina) and the State of Tennessee agreeably to the true intent and meaning of the act of the General Assembly of this State, entitled 'An act for the purpose of ceding to the United States of America certain western lands therein described,' " and in effect directing said Commissioners to begin at the point "where the line terminated, which was run in 1799 under the direction" of said McDowell, Matthews and Vance; and thereafter, by an act of her General Assembly, passed and ap-

proved July 26, 1820, the defendant provided for the appointment of three Commissioners to meet with the Commissioners of complainant, and with them "to settle, run, and re-mark the boundary line between this State (meaning Tennessee) and the State of North Carolina, agreeably to the true intent and meaning of the said act of the General Assembly of the State of North Carolina, entitled 'An act for the purpose of ceding to the United States certain western lands therein described,' commonly called the Cession Act."

Under the authority of said acts, the Governor of complainant State of North Carolina appointed James Mebane, M. Stokes, and R. Love as Commissioners, and the Governor of defendant State of Tennessee appointed A. Smith, Isaac Allen, and Simeon Perry as Commissioners. And said Commissioners were charged with the duty of settling and running the line between the two States "agreeably to the true intent and meaning" of said Cession Act, and they had no authority to establish, run, or mark a line not described in said Cession Act; and thereafter said Commissioners, acting
73 under the authority conferred upon them by said acts, and attempting to run and mark said boundary line agreeably to the intent and meaning of the Cession Act, ran and marked the line between the States from the Catalouchee Turnpike to the southern boundary of both States, and made and filed with each State a report of their survey, accompanying the same with a map; but if "field-notes" were filed with said report, as alleged in the bill, the same have been lost, and this defendant has no knowledge whatever in regard thereto.

Defendant further shows that said report so made by said joint Commissioners was duly confirmed, approved, and ratified by the legislatures of both States in 1821. The confirmatory act by defendant State of Tennessee, known as chapter 35 of the Acts of 1821, entitled "An act to establish the boundary line between this State and the State of North Carolina," passed and approved November 9, 1821, is as follows:

"SECTION 1. Be it enacted, etc., That the dividing line run and marked by Alexander Smith, Isaac Allen, and Simeon Perry, Commissioners, for and on behalf of this State; and James Mebane Montfort Stokes and Robert Love, commissioners for and on behalf of the State of North Carolina; which dividing line as run by said commissioners, begins at a stone set up on the north side of Catalouchee Turnpike Road, and marked on the west side Ten. 1821, and on the east side N. C. 1821; running thence on a southwestwardly course to the Bald Rock, on the summit of the Great Iron or Smoky Mountain, and continuing southwestwardly on the extreme height thereof to where it strikes Tennessee River about seven miles above the old Indian town of Tallahassee crossing Porter's Gap, at the distance of twenty-two miles from the beginning, passing Meig's boundary line at thirty-one and a half miles, the Equovetly path at fifty-three miles and crossing Tennessee River at the distance of sixty-five miles from the beginning; from Tennessee River to the main ridge, and along the extreme height of the same
74 to the place where it is called the Unicoy, or Unaka Mountain, striking the old trading path leading from the Valley Towns

to the Overhills Towns, near the head of the west fork of Tellico River, and at the distance of ninety-three miles from the beginning, thence along the extreme height of the Unicoy or Unaka Mountain to the southwest end thereof, at the Unicoy or Unaka Turnpike Road, where a corner stone is set up marked Ten. on the west side and N. C. on the east side, and where a hickory tree is also marked on the south side Ten. 101 M. and on the north side N. C. 101 M. being one hundred and one miles from the beginning; from thence a due course south, two miles and two hundred and fifty two poles to a spruce pine on the north bank of the Hiwassee River, below the mouth of Cane Creek; thence up the said river the same course, about one mile, and crossing the same to a maple marked W. D. and R. A. on the south bank of the river; thence continuing the same course due south eleven miles and two hundred and seventy-three poles to the southern boundary line of the State of Tennessee and North Carolina, making in all one hundred and sixteen miles and two hundred and twenty-three poles from the beginning; and striking the southern boundary line twenty-three poles west of a tree in said line marked 72 M. where was set up by said Commissioners a square post marked on the west side Ten. 1821, and on the east side N. C. 1821, and on the south side G. be and the same is hereby ratified, confirmed and established as the true boundary line between this State and the State of North Carolina."

The confirmatory act by complainant State of North Carolina, entitled "An act to confirm the boundary line between this State and the State of Tennessee, and for other purposes," is as follows:

"1. Whereas the States of Tennessee and North Carolina, by their respective Commissioners duly authorized for that purpose,
75 have run and marked the boundary line between the said
. States, in conformity with their several instructions, and being legally authorized by the States to which they respectively belong; beginning where McDowell, Vance and Matthews terminated their line between the two States in the year one thousand seven hundred and ninety-nine, and agreeably to the Act of the General Assembly, entitled 'An act for the purpose of ceding to the United States of America certain western lands therein described,' passed in one thousand seven hundred and eighty-nine; and in the eleventh article, called the Declaration of Rights, of the Constitution of the State of Tennessee; which said dividing line, as run by the respective Commissioners, beginning at a stone set up on the north side of the Catalouchee Turnpike Road, and marked on the east side, N. C. one thousand eight hundred and twenty-one, and on the west side Ten. one thousand eight hundred and twenty-one; running thence a southwestwardly course to the Bald rock, on the summit of the Great Iron or Smokey Mountain, and continuing southwestwardly on the extreme height thereof to where it strikes Tennessee River, about seven miles above the old Indian town Telassee, crossing Porter's Gap at the distance of twenty-two miles from the beginning, passing Meig's boundary line at thirty-one and a half miles, the Equinottey path at fifty-three miles, and crossing

Tennessee River at the distance of sixty-five miles from the beginning, from Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called Unacay or Unaka Mountain, striking the old trading path leading from the Valley Towns to the Overhill Towns, near the head of the west fork of Tellico River, and at the distance of ninety-three miles from the beginning; thence along the extreme height of the Unacay or Unaka Mountain to the southwest end thereof at the Unacay or Unaka Turnpike Road, where a cornerstone is set up marked N. C. on the east side, and Ten. on the west side, and where a hickory tree is also marked on the north side N. C. 101 M. and the south side Ten. 101 M. being one hundred and one miles from
76 the beginning; from thence a due course south, two miles and two hundred and fifty-two poles, to a spruce pine on the north bank of Highwassee River, below the mouth of Cane Creek; thence up the said river the same course about one mile, and crossing the same to a maple marked W. D. and R. A. on the south bank of the river; thence continuing the same course due south eleven miles and two hundred and seventy-three poles to the southern boundary line of the States of North Carolina and Tennessee, making in all one hundred and sixteen miles and two hundred and twenty poles from the beginning; and striking the southern boundary line twenty-three poles west of a tree in said line marked 72 M. to a square on the east side N. C. 1821, on the west side Ten. 1821, and on the south side G. The whole distinctly marked with two chops and a blaze on each fore and aft tree, and three chops on each side line tree, and mile marked at the end of each mile; which line was run under the joint superintendence of Commissioners appointed by the States of North Carolina and Tennessee, and a surveyor on the part of the Commissioners of each State aforesaid.

"2. Be it enacted, &c., That said boundary line, as described in the foregoing preamble, be, and the same is hereby, fully established, ratified and confirmed as the boundary line between the States of North Carolina and Tennessee forever."

The remainder, or the third section, of said act has no application to this controversy.

Defendant here shows that while both of said confirmatory acts described the boundary line between the States in identical terms, nevertheless the North Carolina act also recites the instructions under which the Commissioners acted, and shows how the line run by them was marked—that is, "with two chops and a blaze on each fore and aft tree, and three chops on each side line tree, and mile marked at the end of each mile."

77 III.

Further answering said bills, and particularly the second and eighth paragraphs thereof, the seventh paragraph of the original bill, and the sixth paragraph of the amended bill, defendant shows to your Honors that, while she understood there was some dispute in relation to parts of the boundary line southward from

the Tennessee River by persons claiming land to the westward of the true boundary line under grants from complainant, yet defendant did not know that complainant State of North Carolina claimed any of the territory west of the line defined by the Cession Act until the original bill in this cause was filed, and it would seem that when complainant filed her original bill, she had not definitely determined how much of said boundary line she would dispute, because said original bill (paragraph 8) avers that the dispute relates to that part of the line "between a point about a mile northeast of the Tennessee River and the junction of the Big Fodderstack and the Hangover leads about nine miles southwest thereof," while the amended bill (paragraph 8), filed after the Babcock Lumber & Land Company sought to intervene in this cause, alleges that that part of said line "between a point about a mile northeast of the Tennessee River and the point at Unaka Turnpike Road, as hereinbefore stated, about twenty miles southwest thereof, has become confused, uncertain, and the subject of contention," thus extending the limits of the disputed zone from the junction of the Big Fodderstack and Hangover leads some ten or eleven miles southwestwardly to the Unaka Turnpike Road.

Defendant here shows to your Honors that while complainant alleges that from a point about one mile northeast of the river the boundary line runs to a point in the southwest bank thereof just west of the mouth of Slick Rock Creek, thence up and from said creek to the Big Fodderstack Mountain, and thence with the
78 main ridge thereof to its junction with the Hangover ridge or lead, yet complainant does not allege that said boundary line, southwest from the junction of the Fodderstack and Hangover leads, as run and marked by the Commissioners in 1821, follows other than the extreme height of the mountain, which is agreeable to the Cession Act of 1789, and defendant admits that southwest of said junction (as well as northeast of said junction) said boundary line does follow the main ridge of the mountain to the point where it is called the Unaka Mountain, and thence with the main ridge thereof to the Unaka Turnpike, and defendant is willing that the line should be so marked and established under the orders of this court, and she denies that the true boundary line is or can be established agreeably to the said Cession Act of 1789 at any other place than along the extreme height of the mountain from the Tennessee River to the Unaka Turnpike Road.

Further answering said bills, defendant denies that the boundary line northeast of the river crossed said river, as alleged in the bills, to a point "in the southwest bank thereof just west of the mouth of the stream known as Slick Rock Creek," or that from such point on the southwest bank of said river said boundary line follows said creek "about five miles," as alleged in the seventh paragraph of the original bill (printed bill, p. 7, line 31), or "a short distance," as alleged in the sixth paragraph of the amended bill (printed bill, p. 8, line 8), "to a ridge leading up to the main ridge * * * known as Big Fodderstack Mountain, and follows the main ridge thence to the junction of the Big Fodderstack and Hangover leads." Defend-

ant avers that said description of this part of the boundary line, as set out in complainant's bill, between said point about a mile northeast of the Tennessee River and the junction of the Hangover and Fodderstack ridges or leads is a clear departure from the description of said boundary line as set out in the Cession Act of 1789, and as the same was actually run by the Commissioners in 1821.

79 Defendant denies that the "Big Fodderstack lead" is either the "extreme height" of the mountain called for in the Cession Act or the "main ridge" run by the Commissioners in 1821, and described in the confirmatory acts above set out, and defendant avers that the Hangover ridge or lead extending from the Tennessee River southwestwardly to the Stratton Bald and the point where the Fodder-stack lead joins it, said Hangover ridge, but several hundred feet under its crest, is the extreme height of the mountain, according to said Cession Act, and the main ridge thereof run by the Commissioners in 1821, and referred to in the confirmatory acts of both States and in the report of the Commissioners, hereinafter shown.

Defendant further shows that that part of the boundary line alleged in the bills, as hereinbefore shown, to be uncertain and disputed is covered by that part of said line described in the Cession Act, above set out, as "along the extreme height of said mountain (that is, the Great Smoky) to a place where it is called Unicoi or 'Unaka' Mountain," and that part of said boundary line run and marked, in 1821, and described in said confirmatory acts, as well as the report of the Commissioners, hereinafter shown, in the following language, to wit:

"Running thence (from the stone on the north side of the Catalouchee Turnpike Road) on a southwestwardly course to the Bald Rock, on the summit of the Great Iron or Smoky Mountain, and continuing southwestwardly on the extreme height thereof to where it strikes Tennessee River, * * * and crossing Tennessee River at the distance of sixty-five miles from the beginning, from Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called Unicoi or Unaka Mountain, * * * thence along the extreme height of the Unicoi or Unaka Mountain to the southwest end thereof at the Unicoi or Unaka Turnpike Road."

Defendant further shows that until the original bill in this cause was filed she was not informed that there was any dispute

80 in relation to the line northeast of the Tennessee River, but did understand that the alleged uncertainty or dispute affected only two points southwest of the river.

Defendant denies that there is any uncertainty in regard to that part of the boundary line northeast of the river, and avers that said boundary line northeast of the river runs, and was so marked by the Commissioners in 1821, down the crest of the main ridge of the mountain, which gradually lowers as it approaches the river, and on said line near to or on the bank of said river, about a half a mile above the mouth of Slick Rock Creek, a pine or hemlock tree was marked as a "fore and aft tree," which said tree is still standing, and

is recognized as a "fore and aft" boundary line tree bearing the marks placed thereon by the Commissioners in 1821, and described in the North Carolina Confirmatory Act and the report of said Commissioners, hereafter shown. And defendant avers that said boundary line as described in said Cession Act of 1789, and run by said Commissioners in 1821, crossed directly over the Tennessee River from said "fore and aft tree" to the crest of the main ridge of the mountain, which is known as the Hangover ridge or lead—and which runs from the Stratton Bald northeasterly to the river, lowering somewhat as it approaches the river, where it ends or terminates in a bluff practically opposite said marked "fore and aft tree," thence along the crest of said Hangover ridge or lead to said Stratton Bald and the junction of Hangover with Fodderstack, the Fodderstack ridge, however, being several hundred feet lower than said main or Hangover ridge.

Defendant here shows to the court, and makes the same a part of this answer, as Exhibit "A" thereto, a map showing the undisputed marked State line several miles northeast of the Tennessee River, and reaching said river at the point where the said marked "fore and aft tree" is still standing, and also the line run and marked by the Commissioners in 1821 along Hangover ridge. Said
81 undisputed marked State line northeast of said river is indicated on said map as follows: ——————; the marked "fore and aft tree" on the northeast bank of the river is indicated by a star (*) character; and southwest of the river the red line on said map marks the top or crest of Hangover ridge or lead, which is the extreme height of the mountain and main ridge thereof, overtopping Big Fodderstack and other ridges in that locality from four hundred to eight hundred feet, and which, from the said river to the Stratton Bald, is the true boundary line between the two States.

IV.

Further answering said bills, defendant denies that prior to 1892 she never exercised jurisdiction over the land lying immediately west of the boundary line running from the Tennessee River along the extreme height of the main ridge of the mountain to the Unaka Mountain, as claimed by her and hereinbefore set out, and she shows, that immediately after the Indian title to said lands was extinguished, about the year 1836, she established a surveyor's district, known as the "Ocoee District," and directed said lands to be surveyed and sectioned, and accordingly the surveyor-general for said district proceeded to survey out and sectionize said lands, including all of the lands around the headwaters of the Tellico River practically up to the extreme height of the mountain or main ridge thereof, forming the boundary line between the States at that point, but for some reason it seems that said surveyor-general did not survey the lands lying between Slick Rock Creek and the Hangover ridge. Just why said surveyor-general did not complete his work and sectionize the land lying between Slick Rock Creek and the Hangover ridge defendant does not know, but it may have been because this territory was an almost impenetrable broken

mountain basin or valley at that time, explored only by Indians or outlaws, who, by tradition, had their retreat in its practically
82 inaccessible fastnesses. Further, defendant shows that soon after the lands lying around the headwaters of the Tellico River, east of the Unaka Turnpike Road, and running up to the boundary line on the extreme height of the mountain had been sectionized, under the act of the General Assembly passed in 1836, she began to issue and did issue many grants to different persons therefor, and in this way and through her courts and taxing officers, she has continued to claim and exercise jurisdiction up to said line. Afterward, to wit, in 1854, defendant, recognizing that all of the lands to which the Indian title had been extinguished in 1836 had not been sectionized, as had been directed, passed an act providing for the issuance of grants upon said lands, and under said act the unsectionized land between Slick Rock Creek and Hangover ridge became subject to entry and grant but so wild and inaccessible was that territory that although a few people had penetrated it, not until 1882 or 1883 was the same entered in conformity with the laws of defendant. But in 1883 the lands lying west of the Hangover ridge and between said ridge and Slick Rock Creek were entered, in conformity with the laws of Tennessee, by Samuel J. Griffiths and John H. Morton, and in 1886 a grant, No. 41,091, recorded in the Land Office for East Tennessee at Knoxville, was issued to them, which describes the land covered thereby as beginning on a point on the Hangover ridge a short distance from what is known as Hangover rock, and running thence along the crest of said ridge to Little Tennessee River, thence down said river and by various courses and distances back to the beginning, so as to include all of the lands in the Slick Rock basin. Further, defendant shows that some time in the year 1882, H. M. and T. E. H. McCroskey had entered this same land, but did not take out a grant therefor until the year 1892, said grant being regularly issued by the governor of defendant, and recorded in the Land Office of the Ocoee District, and calling for the crest of Hangover ridge or the boundary line
83 between the States. Defendant further shows, and she is informed, that both Morton and Griffiths and said McCroskey, through their tenants, took actual possession of the territory between Slick Rock Creek and the Hangover ridge, and in due course said lands were assessed by defendant for taxation, and the persons living upon said lands exercised by voting and otherwise the rights of citizens of Tennessee. Defendant further shows, as she is informed and so avers the fact to be, that the McCroskey title passed to one Charles Hebard, and his possession being interfered with by D. W. Belding and others, or their agents, claiming the lands under grants alleged to have been issued by complainant, the said Hebard brought suit against the said Belding and others in the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee, at Knoxville, wherein the said Hebard, by bill in equity, exhibited his claim to, and ownership of, said land based upon said McCroskey grant from this defendant, and the defendants Belding and others answered setting up their grants covering said lands issued by complainant State of North Carolina,

It will thus be seen that said Circuit Court of the United States had jurisdiction of said cause, both on account of the character and foundation of the claims and the residence and citizenship of the parties, the complainant Hebard being a citizen of Michigan, and the defendants Belding and others being citizens of Ohio, North Carolina, and other States. In this cause much proof was taken and the question as to the location of the true boundary between the States was referred to a special master, whose finding was in favor of Hebard's claim under the Tennessee grant—that is, that the boundary line ran along the crest of the Hangover ridge and not from the mouth of Slick Rock Creek up said creek and the Fodderstack ridge to its junction with the Hangover ridge as claimed by defendants Belding and others; and said report of the special master was confirmed by the court, who adjudged and decreed that that

84 part of the boundary line between the States of Tennessee and North Carolina, involved in that suit, and as run and located by the Commissioners of said States in 1821, is as found by said special master, as follows: "Crossing Little Tennessee (formerly called the Tennessee) River at the point where it reaches the river on the northeast side and about a half mile above where Slick Rock Creek empties into said river; and from the river runs up the Hangover ridge or lead and along the extreme height of the same, passing the black or red oak, passing Slick Rock Gap, Cold Spring Knob, Big Fat Knob, Hangover Ridge Hao, Grassy Gap, and Stratton Bald, to a junction of the Hangover ridge with the Fodderstack ridge and all the lands lying west or northwest of said Hangover ridge, including Slick Rock basin, is in the State of Tennessee." From the judgment and decree of the Circuit Court of the United States, at Knoxville, as aforesaid, the defendants D. W. Belding and others prayed and were granted an appeal to the Circuit Court of Appeals for the Sixth Circuit, wherein said cause coming on to be heard, the judgment and decree of the Circuit Court were in all things affirmed.

Belding et al. v. Hebard, 103 Fed. Rep., 532.

And your defendant shows that Exhibit "A" to this answer is a substantial copy (reduced in scale) of the map "Exhibit A" to the deposition of W. D. Hale in said case of Belding v. Hebard, showing the undisputed marked State line northeast of the river, the fore and aft tree on the river bank, and the Hangover ridge or lead with the marked State-line trees thereon, which was adjudged and decreed to be the boundary line between the States under the Cession Act of 1789, and as run by the Commissioners of both States in 1821.

Defendant further shows that said Hangover ridge has also been adjudged to be the boundary line between herself and complainant by defendant's Court of Chancery, sitting in the County of Monroe,

85 in a suit involving the validity of the Morton and Griffitts' grant, hereinbefore referred to, so that not only has defendant, through her executive and administrative officers, claimed and exercised sovereignty and jurisdiction over her territory up to the top of the Hangover ridge, but said ridge from the river to its junction with the Fodderstack, has been adjudged the

true boundary between the States by both defendant's courts and the courts of the United States.

V.

Further answering said bills, and particularly the eighth paragraph thereof, defendant shows that she does not know what became of the report and map made by the Commissioners of 1821, and by them delivered to and filed with complainant State of North Carolina, and the same may have been destroyed or lost, but it is true that the report and map made by said Commissioners and filed with this defendant in 1821 did become mislaid for a long number of years, and were not found until the latter part of 1905 or 1906 when the same were discovered by the State Archivist among the records and documents of defendant in the custody of her Secretary of State—the archives of defendant being under the custody of a State Archivist in the Department of State. As hereinafter shown, defendant does not know whether any "field-notes" were ever filed, but if "field-notes" were filed the same have been lost or destroyed without the knowledge or consent of defendant, and certain it is that no "field-notes" were found with said report and map.

Said report is as follows:

"To His Excellency Joseph McMinn, Governor of the State of Tennessee:

The undersigned Alexander Smith, Isaac Allen, and Simeon Perry, Commissioners on the part of the State of Tennessee; and James Mebane, Montfort Stokes and Robert Love, Commissioners on the part of the State of North Carolina, duly appointed under the authority of the Acts of the Legislatures of the said States respectively; having met at the town of Newport in the State of
86 Tennessee on the 16th day of July A. D. 1821, to settle, run and mark the dividing line between the two states, from the termination of the line run by McDowell, Vance and Matthews in the year of our Lord 1799, to the Southern Boundary of the said States, Respectfully Report, That we proceeded to ascertain, run and mark the said dividing line as designated in the XIth Article called the Declaration of Rights, of the Constitution of the State of Tennessee, and in the Act of the General Assembly of the State of North Carolina; entitled "An Act for the purpose of ceding to the United States of America, certain Western lands therein described, passed in 1789;—Which said dividing line as run by us, Begins at a stone set upon the north side of the Catalouchee Turnpike Road, and marked on the west side *of* Ten. 1821; and on the east side N. C. 1821, running thence a southwestwardly course to the Bald Rock on the summit of the Great Iron or Smokey Mountain, and continuing southwestwardly on the extreme height thereof to where it strikes Tennessee River about seven miles above the old Indian Town of Tellassee, crossing Porter's Gap at the distance of twenty-two miles from the beginning; passing Meig's boundary line at thirty-one and a half miles; the Equonettly path at fifty-three miles;—and crossing Tennessee River at the distance of sixty-five miles from the beginning. From

Tennessee River to the main ridge and along the extreme height of the same to the place where it is called the Unicoy or Unaka Mountain, striking the old trading path leading from the Valley Towns to the Overhill Towns, near the head of the west fork of Tellico River, and at the distance of ninety-three miles from the beginning. Thence along the extreme height of the Unicoy or Unaka Mountain to the southwest end thereof at the Unicoy or Unaka Turnpike road, where a corner stone is set up, marked Ten. on the west side and N. C. on the east side; and where a hickory tree is also marked on the south side Ten. 101 m. and on the north side N. C. 101 m. being one hundred and one miles from our beginning. From thence a due course south two miles and two hundred and fifty-two poles to a
87 spruce pine on the north bank of Highwassee River, below the mouth of Cane Creek; thence up the said river the same course about one mile, and crossing the same to a maple marked W. D. and R. A. on the south bank of the river; thence continuing the same course due south eleven miles and two hundred and twenty-three poles to the Southern Boundary line of the states of Tennessee and North Carolina; making in all one hundred and sixteen miles and two hundred and twenty-three poles from our beginning; and striking the Southern Boundary line twenty-three poles west of a tree in said line, marked 72 m.—where we set up a square post marked on the west side Ten. 1821; on the east side N. C. 1821; and on the south side G. The said dividing line run by us in its whole length is distinctly marked with two chops and a blaze on each fore-and-aft tree, and three chops on each side line tree; and mile marked at the end of each mile; agreeably to the plats which accompanies this Report, and which said plats and Report are certified by us in duplicate, one for each of said states, in the same words, marks and figures; which we respectfully submit to the Governors of the said states of Tennessee and North Carolina.

Given under our hands at Knoxville in the State of Tennessee, on the 31st day of August, A. D. 1821.

A. SMITH,
ISAAC ALLEN,
SIMEON PERRY,
Commissioners of Tennessee.
JAMES MEBANE,
M. STOKES,
R. LOVE,
Commissioners of N. Carolina."

as shown by the certified copy thereof filed as Exhibit "B" to this answer.

A certified copy of said map is filed as Exhibit "C" hereto.

Defendant further shows that said report and map coming to the knowledge of said Belding and others, defendants in said suit of Hebard v. Belding et al., the said Belding, or his privies in estate, filed a bill of review in the Circuit Court of the United States
88 at Knoxville, insisting that said map (Exhibit "C") sustained their claim that the boundary line between the States ran up

Slick Rock Creek, and praying that the former decree adjudging that the line ran directly across the river from the aforesaid fore and aft tree to and along the top of Hangover ridge be set aside; but upon answer being made to said bill and proof having been taken, it developed that just east of the Hangover ridge was a creek or small river called "Cheoah," and upon the hearing the Circuit Court adjudged and decreed that said map did not sustain the contention of the said Belding and others, but the contention of the said Hebard, and further adjudged and decreed that the former decrees in said case, to the effect that the boundary line was along the top of Hangover ridge, were correct, and dismissed said bill of review. The court held that the creek just east of said boundary line marked on the map was Cheoah River or Creek, and "that there is nothing in the newly discovered evidence to warrant this court in holding that had it been before the court at the original hearing a different conclusion would have been reached, but, on the other hand, the newly discovered evidence rather tends to strengthen the correctness of the original decree."

Further, defendant shows and avers that said map (Exhibit "C") not only sustains her claim that the boundary line, as run by the Commissioners in 1821, proceeded directly across the Tennessee River from the marked fore and aft tree to the Hangover ridge, and thence along its crest, as hereinbefore shown, but also sustains and confirms defendant's claim that the true boundary line is east of the headwaters of the Tellico River, referred to in said report and the acts confirming the same, and that all the lands lying around the headwaters of the Tellico River belong to and are within the true and just boundaries of the State of Tennessee, notwithstanding a holding by the United States Court at Knoxville in another case between contending claimants under grants from both States to the effect
that said line, instead of running around the headwaters of
89 said Tellico River, crossed the same; but defendant was not a
party to said suit, nor is she bound thereby, and the same was decided before said map, Exhibit "C," was found, upon meager testimony not disclosing the facts in relation to said boundary line, and defendant again avers that the extreme height of the mountain called for in said Cession Act is east of the lands lying around the headwaters of the Tellico River, and that said map, Exhibit "C," shows that said line was run by the Commissioners in 1821 so as to include all of said lands on the Tennessee side of said line, and was so run "agreeably" to said Cession Act.

VI.

Further answering said bills, and particularly the sixth paragraph of the original bill and the seventh paragraph of the amended bill, defendant admits that she has at all times claimed to own, and the right to exercise jurisdiction over, the lands up to the true boundary line between the States as described in said Cession Act and as run by the Commissioners in 1821, but she avers that complainant, whether intentionally or otherwise, has by the issuance of grants

west of the true boundary line encroached upon defendant's rightful territory, and thus sought wrongfully to appropriate or dispose of the same.

Further answering, defendant denies that the United States, through their executive, legislative, and judicial departments, have recognized the boundary line as contended for by the complainant, and also denies that any topographical map, in accordance with the claim of complainant, has been made by actual survey and location on the ground.

VII.

And now defendant, in addition to the foregoing specific denials, generally denies all the allegations of the bills adverse to the
90 matters and claims set up in this answer, and she calls upon the complainant to sustain the allegations of her bill of complaint, if any she can, by strict proof.

Wherefore this defendant, having fully answered, confessed, traversed, and avoided or denied all the matters in the bill of complaint material to be answered according to her best knowledge and belief, humbly prays this Honorable Court that the said complainant's bill may be dismissed, and that the defendant have and recover her reasonable costs.

Cross-Bill.

For cross-complaint and for affirmative relief your oratrix, the State of Tennessee, shows to the Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of the United States:

First.

That, as is shown in her answer hereinbefore, the territory over which your oratrix exercises, and has the right to exercise, jurisdiction, was formerly a part of the State of North Carolina, but, in 1789, was ceded by said State to the United States, and thereafter, by the inhabitants thereof, duly organized into a separate State under the name of your oratrix, State of Tennessee, and as such admitted into the Union in 1796:

Thus the western boundary of the State of North Carolina became the eastern boundary of your oratrix, and for a description thereof, as set out in said Cession Act, and also in the Declaration of Rights embodied in your oratrix's first Constitution, adopted in 1796, and for the facts in relation to the running and marking of a part of said boundary line in 1799 by Commissioners appointed by the State of North Carolina, and the running and marking of the re-
91 mainder of said line in 1821 by Commissioners appointed by both States, and for the acts conferring authority upon said Commissioners and confirming the reports made by them, your oratrix, in order to avoid further enlarging this record, craves leave to refer, and does hereby refer, to her answer in this cause, and makes the same a part of this cross-bill as though the averments thereof were here again specifically set out.

Second.

That while there should be no uncertainty in relation to the location of said boundary line, nevertheless the State of North Carolina contends that said boundary line from a point about one mile northeast of the Tennessee River (now called the Little Tennessee River) southwestwardly to the Unaka Turnpike Road, a distance of about "twenty miles," as alleged, is confused and uncertain, and seeks, as your oratrix understands her claims, to encroach upon the territory of your oratrix west of the true boundary line as fixed by said Cession Act of 1789, and as the same was run and marked by the Commissioners of both States in 1821.

Your oratrix charges that, by said Cession Act of 1789, the boundary line between the States was intended to be fixed, and was fixed, on the extreme height or crest of the range of mountains separating the State of North Carolina from that part of her territory ceded to the United States, and that part of the boundary line now disputed, as aforesaid, by the State of North Carolina, is described in said Cession Act as "along the extreme height of said mountain (meaning the Great Smoky Mountain) to the place where it is called the Unicoi or Unaka Mountain, between the Indian towns of Cowee and Ochota, thence along the main ridge of the said mountain," etc., and, as shown in your oratrix's said answer, it was the duty of the Commissioners of both States, appointed in 1821
92 to run and mark said line, to run and mark the same "agreeably" to said calls contained in said Cession Act.

Your oratrix further charges that said Commissioners in 1821 attempted to run, and did run, said boundary line according to the description thereof contained in said Cession Act, and their report shows, as set out in and made a part of your oratrix's answer, that northeast of the Tennessee River beginning at the Cataloochee Turnpike Road, they ran and marked "a southwestwardly course to Bald Rock on the summit of the Great Iron or Smoky Mountain, and continuing southwestwardly on the extreme height thereof to where it strikes the Tennessee River," and that they crossed said river in a direct line to the main ridge of said mountain, and then "along the extreme height of the same to the place where it is called the Unicoi or Unaka Mountain, * * * thence along the extreme height of the Unicoi or Unaka Mountain to the southwest end thereof at the Unicoi or Unaka Turnpike Road."

Your oratrix further charges that said Commissioners running said boundary line in 1821 had no other authority than to run the same along the extreme height of said Iron or Great Smoky Mountain; and your oratrix believes, and so charges the fact to be, that said boundary line was run and marked by said Commissioners agreeably to the calls of said Cession Act of 1789; but your oratrix charges that if said Commissioners had attempted to deviate from or did deviate from the natural boundary line in said Cession Act—that is, the extreme height of said Iron or Great Smoky Mountain, that their acts and doings in that regard would have been without authority, and could not have the effect of changing the boundary

line between said States or transferring any part of the territory of one of them to the other.

Your oratrix further charges that there is no uncertainty whatsoever about the boundary line northeast of the Tennessee River, because the same was run and marked down to the river bank
93 on or near which is still standing a pine or hemlock tree marked by the Commissioners of both States in 1821, and bearing the marks of a "fore and aft tree" described in the North Carolina confirmatory act of 1821 and in the report of the Commissioners embodied in your oratrix's answer; and not until the original bill was filed by the State of North Carolina in this cause was there even any dispute in regard to the boundary line northeast of the Tennessee River.

Your oratrix further charges that said boundary line crosses said Tennessee River directly from said marked "fore and aft tree" to the main ridge of said Great Smoky Mountain, which, at that place, is known as the Hangover ridge, and that said boundary line proceeds along the crest of said ridge and was so run and marked by the Commissioners in 1821 for a distance of eight or ten miles to a point where another ridge, called the Big Fodderstack, joins said Hangover ridge, but several hundred feet beneath the crest of said Hangover ridge.

Your oratrix charges that all of the territory west of said Hangover ridge belongs to her, and that she has the right to exercise jurisdiction and control thereover.

Your oratrix further charges that proceeding southwestwardly from the junction of said Hangover and Fodderstack ridges said boundary line follows the extreme height of said Great Smoky Mountain to where it is called the Unaka Mountain and thence along the extreme height of Unaka Mountain to the Unaka Turnpike Road, and that all the land and territory west of said extreme height of said mountain, including all of the lands around the headwaters of the Tellico River, belong to and are within the just and rightful boundary of your oratrix.

Your oratrix further shows that the State of North Carolina sets up a specific claim to certain lands immediately southwest of the Tennessee River and west of the Hangover ridge, but southwestward from the junction of the Hangover and Big Fodderstack
94 ridges no claim seems to be made except that the boundary line from said junction point to the Unaka turnpike road "is confused, uncertain, and the subject of contention."

Your oratrix shows that it is true that there is some dispute, growing out of contending claims under grants from both States, in relation to that part of the boundary line around the headwaters of the Tellico River, but she avers that said boundary line at that point, as at all other points from the Tennessee River to the Unaka turnpike road, follows and is upon the extreme height of said mountains (the divide of the waters) running from said Little Tennessee River to said Unaka turnpike road.

Your oratrix charges that said boundary line, from the Tennessee River to the junction of the Hangover and Fodderstack ridges, has

been judicially declared and decreed to be along the crest of the Hangover ridge—which, at that place, is the main ridge of said mountain—by both the courts of Tennessee and of the United States, and the remainder of said disputed boundary line can be easily ascertained by following the extreme height of said mountain to the Unaka turnpike road agreeably to said Cession Act of 1789 and the running thereof by the Commissioners of both States in 1821.

Your oratrix here refers to and makes a part of this cross-bill the maps, Exhibits "A" and "C" to your oratrix's answer, and the averments of said answer pertaining to and in relation to said maps and the lines shown thereon.

Your oratrix is advised that she has the right to appeal to this court of equity for affirmative relief against the State of North Carolina, and to have the boundary line between herself and the State of North Carolina decreed as hereinbefore set out.

Wherefore your oratrix, to the end that she may obtain the relief to which she is justly entitled in the premises, prays the court and your honors to grant to her your writ of subpœna directed to
95 the State of North Carolina, and to the Governor of the said State, and to the Honorable T. W. Bickett attorney general of said State of North Carolina, commanding them and requiring them and each of them, on a day certain, to appear herein and answer, not under oath, an answer under oath being hereby expressly waived, to the several allegations in this cross-bill contained.

And that upon final hearing the boundary line dividing the States of Tennessee and North Carolina from a point about a mile northeast of the Tennessee River southwestwardly to the Unaka turnpike road be ascertained, declared, and decreed as prayed by your oratrix; that is, that said boundary line northeast of the river be decreed to run down to said river at the point where the fore and aft tree marked by the Commissioners of both States in 1821 is still standing, thence crossing said river directly to the main or Hangover ridge, and thence along the crest thereof to its junction with the Fodderstack ridge, as shown on Exhibit "A" to your oratrix's answer, thence from said junction point along the extreme height of said Great Smoky Mountain to the place where it is called the Unaka Mountain, and thence along the extreme height of said Unaka Mountain to the southwest end thereof at the Unaka turnpike road, and that said line not only be located but permanently marked under the orders of this court, and that the full title and sovereignty to and over all the lands and territory west of said line be decreed and adjudged to be in your oratrix, State of Tennessee, and that the State of North Carolina be perpetually inhibited and enjoined from disputing such title and sovereignty of the State of Tennessee therein.

And your oratrix humbly prays for such other, further, and general relief as in equity and good conscience she may be entitled to upon the facts herein stated.

CHARLES T. CATES, JR.,
Attorney General of Tennessee.

96 THE STATE OF TENNESSEE,
Shelby County:

Personally came and appeared before me the undersigned authority in and for said county and State, Malcolm R. Patterson, who on oath states that he is the governor of the State of Tennessee; that he has read the foregoing answer and cross bill, and knows the contents thereof, and that the matters and things therein contained and alleged are true as therein alleged and stated to the best of his information and belief.

MALCOLM R. PATTERSON.

Sworn to and subscribed before me, this the eighth day of October, A. D. 1909.

[SEAL.]

J. O. SIMS,
Notary Public.

(Here follows map of leading ridges, Ex. A., marked page 97.)

98 STATE OF TENNESSEE,

[Vignette.]

DEPARTMENT OF STATE.

I, Hallum W. Goodloe, Secretary of the State of Tennessee, do certify that the annexed is a true copy of the report of the Commissioners of the State of North Carolina and the State of Tennessee in regard to so much of the dividing line between North Carolina and Tennessee as was run by said Commissioners from the Big Pigeon River to the Georgia Line, 1821, the original of which is now of record in the Department of Archives.

In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor, affixed the great seal of the State of Tennessee, at the department, in the city of Nashville, this 16th day of August, A. D. 1909.

[SEAL.] HALLUM W. GOODLOE,
Secretary of State.

NORTH CAROLINA
vs.
TENNESSEE.

EXHIBIT B TO THE ANSWER OF TENNESSEE.

To His Excellency Joseph McMinn, Governor of the State of Tennessee:

The undersigned Alexander Smith, Isaac Allen and Simeon Perry Commissioners on the part of the State of Tennessee; and James Mebane, Montfort Stokes and Robert Love Commissioners on the part of the State of North Carolina, duly appointed under the authority of the Acts of the Legislatures of the said States respectively; having met at the town of New Port in the State of Tennessee on the 16th day of July A. D. 1821, to settle, run and mark the dividing line between the two States, from the termination of the
99 line run by McDowell, Vance and Matthews in the year of our Lord 1799, to the Southern Boundary of the said States, Respectfully Report, That we proceeded to ascertain, run and mark the said dividing line as designated in the XIth Article called the Declaration of Rights, of the Constitution of the State of Tennessee, and in the Act of General Assembly of the State of North Carolina; entitled "An act for the purpose of ceding to the United States of America certain Western lands therein described, passed in 1789:— Which said dividing line as run by us, Begins at a stone set upon the north side of the Cataloochee Turnpike road, and marked on the West Side *of* Ten. 1821; and the East side N. C. 1821, running thence a Southwesterly course to the Bald Rock on the summit of the great Iron or Smokey Mountain and continuing Southwestwardly on the extreme height thereof to where it strikes Tennessee River about seven miles above the old Indian Town of Tellassee, crossing

Porters gap at the distance of twenty two miles from the beginning; passing Meig's boundary line at thirty one and a half miles:—the Equonettly path at fifty three miles:—and crossing Tennessee River at the distance of Sixty five miles from the beginning. From Tennessee River to the main ridge and along the extreme height of the same to the place where it is called the Unicoy or Unaka Mountain, striking the old trading path leading from the Valley Towns to the Overhill Towns, near the head of the West fork of Tellico River, and at the distance of ninety three miles from the beginning. Thence along the extreme height of the Unicoy or Unaka Mountain to the South west end thereof at the Unicoy or Unaka Turnpike road, where a corner stone is set up, marked Ten. on the West side and N. C. on the East side; and where a Hickory tree is also marked on the South side Ten. 101 m. and on the North side N. C. 101 m. being one hundred and one miles from our beginning. From thence a due course South two miles and two hundred & fifty two poles to a Spruce Pine on the North Bank of Highwassee River, below the mouth of Cane Creek; thence up the said River the same
100 course about one mile, and crossing the same to a Maple marked W. D. and R. A. on the South bank of the River; Thence continuing the same course due south Eleven miles and two hundred and twenty three poles to the Southern Boundary line of the States of Tennessee and North Carolina; making in all one hundred and sixteen miles and two hundred and twenty three poles from our beginning; and striking the Southern Boundary line twenty-three poles West of a tree in said line, marked 72 m.—Where we set up a square post marked on the West side Ten. 1821; on the East side N. C. 1821; and on the South side G. The said dividing line run by us in its whole length is distinctly marked with two chops and a blaze on each fore-and-aft tree, and three chops on each side line tree; and mile marked at the end of each mile; agreeably to the plats which accompanies this Report, and which said plats and Report are certified by us in Duplicate, one for each of said States, in the same words, marks and figures; which we respectfully submit to the Governors of the said State of Tennessee and North Carolina.

Given under our hands at Knoxville in the State of Tennessee on the 31st day of August A. D. 1821.

A. SMITH,
ISAAC ALLEN,
SIMEON PERRY,
Commissioners of Tennessee.
JAMES MEBANE,
M. STOKES,
R. LOVE,
Commissioners of N. Carolina.

(Here follows map of dividing line, Ex. C., marked page 101.)

MAPS

TOO

LARGE

FOR

FILMING

[Endorsed:] Supreme Court U. S. October term, 1909. Term No. 7, original. The State of North Carolina, complainant, vs. The State of Tennessee. Answer and cross-bill of the State of Tennessee. Filed Oct. 11th, 1909.

101 (Endorsed:) Supreme Court U. S. October Term, 1909. No. 7, original. The State of North Carolina, complainant, vs. The State of Tennessee. Answer and cross-bill of the State of Tennessee. Filed October 11, 1909.

102 And afterwards, to wit, on the 8th day of November, A. D. 1909, a motion for leave to file Replication & Answer to Cross-Bill was filed in the words & figures following, viz:

103 In the Supreme Court of the United States, October Term, 1909.

No. —, Original.

STATE OF NORTH CAROLINA, Complainant,
vs.
STATE OF TENNESSEE, Defendant.

Motion for Leave to File Replication and Answer to Cross-bill.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The State of North Carolina by T. W. Bickett, Attorney General, humbly shows unto this Court as follows, to wit:

That the State of North Carolina filed its original bill in equity against State of Tennessee in this Honorable Court on the — day of March, 1909, and on the — day of May, 1909, was given leave to file, and did file, an amended bill against the State of Tennessee, the defendant herein praying, among other things, for a judgment and decree defining and making part of the boundary line between the said States, according to the contentions of the State of North Carolina in its said original and amended bill set out; that the State of Tennessee by its Governor and Attorney General has duly entered its appearance in said cause, and was granted leave to make defense on or before the first day of October Term, 1909, of this Court; and did, on the 11th day of October, 1909, file its answer to the said original and amended bill and accompanied the same by its Cross-Bill making the State of North Carolina defendant thereto.

104 The State of North Carolina herewith humbly presents its Replication to the Answer of the said State of Tennessee and accompanies it with its answer to the Cross-Bill of the said State of Tennessee; and prays that its said Replication and Answer to the said Cross-Bill may be filed; and that the necessary and proper process shall issue to the said State of Tennessee directed to

the Governor and Attorney General of said State, as aforesaid, and that such further proceedings may be had in the cause as may be meet and proper.

T. W. BICKETT,
Attorney General of North Carolina.

C. B. MATTHEWS.
F. A. SONDLEY.
THEO. F. DAVIDSON.
Of Counsel.

This the 2nd day of November, 1909.

Endorsed: Supreme Court U. S., October Term, 1909. No. 7, Original. The State of North Carolina, complainant, vs. The State of Tennessee. Motion for leave to file replication and answer to cross-bill. Filed November 8th, 1909.

105 And on the same day, to wit, on the 8th day of November, A. D. 1909, the following entry appears of record viz:

106 Supreme Court of the United States, October Term, 1909.

No. 7, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

On motion of Mr. F. A. Sondley, of counsel for the complainant, leave is hereby granted to file replication to the answer, and answer to the cross-bill herein.

November 8, 1909.

Which said replication and answer to cross-bill are in words and figures following, viz:

107 Supreme Court of the United States, October Term, 1909.

No. 7, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE, Defendant.

Complainant's Replication.

The Replication of the Complainant, The State of North Carolina, to the Answer of the Defendant, The State of Tennessee.

This replicant, saving and reserving to herself all and all manner of advantage of exception which may be had and taken to the mani-

fold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereunto saith that she does and will aver, maintain, and prove her said bill to be true, certain, and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and
108 things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by her said bill she has already prayed.

T. W. BICKETT,
Attorney General of North Carolina.
THEO. F. DAVIDSON,
C. B. MATTHEWS,
Counsel for Complainant.

[Endorsed:] 7, orig'l. '09. October term, 1908. No. 13, original. Supreme Court of the United States. The State of North Carolina, complainant, vs. The State of Tennessee, defendant. Replication.

[Endorsed:] Supreme Court U. S., October term, 1909. Term No. 7, original. The State of North Carolina, complainant, vs. The State of Tennessee. Replication. Filed November 8th, 1909.

109 Supreme Court of the United States, October Term, 1909.

No. 7, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE, Defendant.

Original Bill.

THE STATE OF TENNESSEE, Cross-complainant,
vs.
THE STATE OF NORTH CAROLINA, Defendant.

Cross-bill.

Answer to Cross-bill.

The Answer of the State of North Carolina to the Cross-bill of the State of Tennessee.

This defendant, The State of North Carolina, now and at all times hereafter saving to herself all and all manner of benefit or advantage of exception or otherwise that can or may be had or

taken to the many errors, uncertainties, and imperfections in the said cross-bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for her to make answer to, answering, says:

1.

110 This defendant alleges that the territory constituting the present State of Tennessee was ceded to the United States by act of the legislature of North Carolina in 1789 (said act being found in the Revised Statutes of 1837 of said State, vol. 2, page 171), and in said act of cession the boundary line is described from the French Broad River westwardly as follows, to wit: "Thence along the highest ridge of said mountain" (Iron Mountain) "to the place where it is called the Great Iron or Smoky Mountain; thence along the extreme height of said mountain to the place where it is called Unicoi or Unaka Mountain, between the Indian towns of Cowee and Old Chota; thence along the main ridge of said mountain to the southern boundary of this State;" that the deed made by the State of North Carolina in pursuance of the above-mentioned act, which was dated the twenty-fifth day of July, 1790, and which was accepted by an act of Congress ("Laws of United States," vol. 2, page 85, old edition of 1815), follows the same description, as does also the Constitution of the State of Tennessee (article 1, section 31), declaring the boundaries of said State.

2.

That in the year 1796 the General Assembly of the State of North Carolina passed an act (Revised Statutes, 1837, vol. 2, page 93) appointing commissioners "to settle the boundary line between this State and the State of Tennessee," and these commissioners, acting under said appointment and a similar authority and appointment by the State of Tennessee, "settled" this line from the east to a point on the Great Iron or Smoky Mountain west of the Pigeon River, marked by a stone set up on the north side of the Cataloochee Turnpike road, about due north from the present town of Waynesville, in Heywood County, North Carolina, and about sixty-five miles east of the point where the Tennessee River passes through said mountain range

111 3.

That afterwards, to wit, in the year A. D. 1819, the General Assembly of the State of North Carolina passed an act (Revised Statutes, 1837, vol. 2, page 94) authorizing the appointment of commissioners "to accurately run, distinctly mark, and permanently establish" the boundary line between the States of North Carolina and Tennessee from the point where the line of the former commissioners stopped to the western terminus, and about the same time the State of Tennessee enacted a similar act, and in pursuance of said acts the Governor of Tennessee appointed three commissioners, to wit, A. Smith, Isaac Allen, and Simeon Perry, and

the Governor of North Carolina appointed James Mebane, M. Stokes, and R. Love as commissioners on behalf of the State of North Carolina, to accurately run, distinctly mark, and permanently establish the boundary line between the said States from the point where the former commissioners stopped to its western terminus, and thereafter the said commissioners, acting jointly, surveyed, located, and marked said State line between the points last above designated, and in August, 1821, filed with each State a report and map setting out that part of the State line which they had so surveyed, located, and marked, and, as your oratrix is informed and believes, filed also the field-notes of the surveyors whom the said commissioners had employed to assist in making the said surveys and maps, and that after filing of said reports, maps, and field-notes an act was passed by the General Assembly of the State of North Carolina in the year 1821 (Revised Statutes (1837), vol. 2, page 96), and a similar act was passed by the legislature of the State of Tennessee at about the same time, and each of said acts adopted and confirmed the line run by the said commissioners under the acts aforesaid and shown by the map so filed, and established and described the same as follows: "Beginning at a stone set up on the north side of the Cataloochee Turnpike road, marked on the west side 'Ten. 1821,'
112 and on the east side 'N. C. 1821,' and running thence on a southwestwardly course to the Bald Rock on the summit of the Great Iron or Smoky Mountain, and continuing southwestwardly on the extreme heights thereof to where it strikes Tennessee River about seven miles above the old Indian town of Talla-see, crossing Porter's Gap at a distance of twenty-two miles from the beginning, passing the Meigs boundary line at thirty-one and a half miles, the Equonautley Path at fifty-three miles, and crossing Tennessee River at a distance of sixty-five miles from the beginning; from the Tennessee River to the main ridge and along the extreme height of the same to the place where it is called Unicoi or Unaka Mountain, striking the old trading path from the valley towns to the over-hill towns near the head of the West fork of Tellico River, at the distance of ninety-three miles from the beginning; thence along the extreme heights of the Unicoi or Unaka Mountain to the southwest end thereof at the Unicoi or Unaka Turnpike road, where a cornerstone is set and marked 'Ten.' on the west side and 'N. C.' on the east side, and where a hickory tree is also marked on the south side 'Ten. 101 m.' and on the north side 'N. C. 101 m.,' being 101 miles from the beginning;" and thence by a general southerly course to the southern boundary line of the States of Tennessee and North Carolina, where was set up by said commissioners a square post, marked on the west side "Ten. 1821" and on the east side "N. C. 1821" and on the south side "G."

That said boundary line between the States of North Carolina and Tennessee may be generally described as following the main ridge or watershed of the Allegheny Mountain range, which has many local names, such as the Great Iron or Smoky Mountain and Unaka or Unicoi Mountain, but between the "extreme height" of the Great Iron or Smoky Mountain and the "main ridge" of Unaka or Unicoi

Mountain the Tennessee River breaks through the mountain in its northwestwardly course, and that part of the State line which descends from the extreme height of the Great Smoky Mountain
113 to Tennessee River crosses the river and ascends to the main ridge of Unaka Mountain, and thence to the point mentioned and designated in the report of the commissioners who made the survey in 1821, as hereinbefore mentioned, "at the Unicoi or Unaka Turnpike road, where a cornerstone is set and marked 'Ten.' on the west side and 'N. C.' on the east side, and where a hickory tree is also marked on the south side 'Ten. 101 m.' and on the north side 'N. C. 101 m.' being 101 miles from the beginning," has fallen into dispute. The line having been surveyed through a heavily timbered mountain country at a time when that part of it was still occupied by the Cherokee Indians, few of the mountains and streams had names known to the commissioners which could be indicated upon their maps, and the line had to be marked upon the ground by marks made upon trees. Many of these marks, designated in the report of the commissioners and thereafter known as "State-line marks," which consisted of two hacks above a blaze, have been destroyed by the ravages of time and the ignorance and recklessness of man, and some ancient marks on a line running about half a mile northeast of the Tennessee River and on the Hangover Ridge southwest of said river, which are not in fact State-line marks, have been mistaken by surveyors for State-line marks, with the result that dispute and controversy have arisen as to the true location of the State line between the extreme height of the mountain northeasterly of Tennessee River and the main ridge thereof southwesterly of the river, as aforesaid. Your oratrix has always believed, and acted upon the belief, and alleges the fact to be, that the line between these points descends from the extreme height of the mountain northeast of the river to the river, crosses the river to a point in the southwest bank thereof just west of the mouth of the stream known as Slick Rock Creek, follows the creek a short distance to a ridge leading up to the main ridge, follows said ridge up to the summit known as Big
Fodderstack Mountain, and follows the main ridge, thence to
114 the junction of the Big Fodderstack and Hangover leads, and thence follows the main ridge of Unaka Mountain southwesterly. Up to the year 1892 said line as claimed by your oratrix has been conceded to be the true line by the residents and surveyors of both States in that vicinity, and said line is the line fixed and located by said commissioners and marked by them. Your oratrix states that the State of Tennessee recognized this line as the State line in the year 1835, when it laid out the Ocoee land district, and fixed said line as the eastern boundary of said district and of its county of Monroe; that after the removal of the Cherokee Indians from this territory the State of North Carolina, in the year 1853, opened these lands to its citizens for entry, and thereafter issued a large number of grants running to said line as the State line, collected taxes upon all of the lands running to said line from the year 1860 to the present time, and exercised in all respects its jurisdiction over all of the lands running to said line; that during the

entire period from 1821 to 1892 the State of Tennessee never granted any lands by description which called for any other location of the State line than the one claimed by your oratrix; that about the year 1892 the State of Tennessee issued grants to sundry persons for the land lying south of the Tennessee River and between the State line as claimed by your oratrix and a line beginning at the junction of the Fodderstack lead with Hangover lead and running northeasterly along the Hangover lead to Hangover Mountain and northerly from Hangover Mountain to Tennessee River, and described in said grant the last-described line from the junction of the two leads to Tennessee River as the State line between Tennessee and North Carolina, and also issued grants for the lands lying at and near the head of Tellico River east of line as claimed by your oratrix. Your oratrix still further states that since 1892 the timber upon the lands in the vicinity of Tennessee River has become valuable; that during the past three or four years the State of Tennessee has undertaken to exercise jurisdiction over the disputed territory and
115 to collect taxes thereon; that unseemly strife has resulted from the assertion by each State of jurisdiction over the same territory; that the construction of a railroad along Tennessee River now makes the land in dispute the natural center of large industrial developments, calling for the continuous exercise of all of the functions of government, none of which are possible of exercise in an orderly manner until the true location of this part of the State line has been finally determined.

4.

That the boundary between the States of North Carolina and Tennessee is disputed and in controversy in so far as the same is hereinafter set out, and that the State of Tennessee has lately been making grants of land within the disputed territory, and exercising sovereignty and jurisdiction thereover, and interfering seriously with the State of North Carolina in the undisputed exercise of its sovereignty and jurisdiction over the lands in the said disputed territory, which sovereignty and jurisdiction of said State of North Carolina was up to the year 1892 exercised without let, hindrance, or controversy.

5.

That ever since the confirmation of said survey, maps, reports, and location of said line by the acts of the respective States in 1821, aforesaid, until 1892 the respective States of North Carolina and Tennessee have exercised sovereignty and jurisdiction in all respects, and have made surveys and grants of land in accordance with the State line as located by the said last-named commissioners and up to the line as laid down and determined by them and no further, and have recognized said line as the true line, and the said line has been recognized by the Congress of the United States and by the United States Government in organizing its courts, making its appointments, and administering its laws in the respective States, and the United States Government, through its Coast Survey and its Geological

Survey, for Government purposes, went over and identified
116 the survey and line as located in 1821 by the said commissioners on behalf of the States of North Carolina and Tennessee from surveys and other information obtained on the ground in the years 1884, 1885, and 1892, and in the year 1892 caused an official topographical map of the said territory to be constructed, showing the line as located by the said commissioners, and in the year 1904 caused the said topographical map to be revised without changing a part of the State line which is in dispute herein.

6.

That when contests first arose from the granting by the State of Tennessee to citizens of Tennessee of lands long previously granted by the State of North Carolina to her own citizens it was discovered, after the most diligent search in the archives of the State of North Carolina at Raleigh and of the State of Tennessee at Nashville, that neither of the original maps made by the commissioners of 1821, showing the location of the State line as located by them, nor the field-notes made by the surveyors in 1821 could be found; that the capitol building at Raleigh, North Carolina, which was then and now is the capital of the State, was destroyed by fire about the year 1832, at which time many of the records of the State of North Carolina were destroyed, which records may have included said map and field-notes; that, as your oratrix is informed and believes, some time in the year 1903 or the year 1904 there was discovered by the State archivist of the State of Tennessee, among papers supposed to be worthless, the original map filed with the State of Tennessee by the commissioners of 1821, showing the line run, located, and marked by them and adopted by the States of North Carolina and Tennessee as the State line, as aforesaid; that prior to the finding of said map surveyors had mistaken certain ancient marks for State-line marks, had mistaken which is the main ridge southwest of Tennessee River, because from the Tennessee and Cheoah Rivers certain spurs lead to the main ridge southwesterly of Tennessee River, and since the finding of said map have confused Slick Rock Creek
117 with Cheoah River, which is about two miles from said creek, but the said map shows the State line to be where your oratrix has always claimed it to be.

7.

The State of North Carolina therefore alleges the fact to be that the said State line is not as claimed by the State of Tennessee, but is situate as claimed by this answering defendant, and is located in accordance with the allegations of this answer, hereinbefore set out, both in the original bill and in this answer.

8.

This answering defendant denies that the location of said State line has been determined in any judicial proceedings whatever to which the State of North Carolina was a party or by which she is in

any way bound or concluded, but alleges that if any such determination was had it was in a litigation or in litigations which were entirely between private parties, and that no person is bound or concluded thereby except such as were parties to the respective records.

9.

Without this, if there is any other matter, cause, or thing in the said cross-complainant's said cross-bill of complaint contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed from further consideration of said cross-bill, with her reasonable costs and charges in this behalf most wrongfully sustained.

T. W. BICKETT,
Attorney General of North Carolina.

THEO. F. DAVIDSON,
C. B. MATTHEWS,
Of Counsel.

118 UNITED STATES OF AMERICA,
State of North Carolina:

T. W. Bickett, being first duly sworn, deposes and says that he is the duly elected, qualified, and acting Attorney General of the State of North Carolina, the defendant to the cross-bill herein, and as such is authorized to file the foregoing answer to the cross-bill herein filed by the defendant; that he has read the said bill and knows the contents thereof, and the same is true as he verily believes.

T. W. BICKETT.

Subscribed and sworn to before me this the 27th day of October, 1909.

Witness my hand and official seal.

[Seal of the Supreme Court of the State of North Carolina.]

THOS. S. KENAN,
Clerk Supreme Court of North Carolina.

[Endorsed:] 7, orig'l. '09. October term, 1908. No. 13, original. Supreme Court of the United States. The State of North Carolina, complainant, vs. The State of Tennessee, defendant. Original bill. The State of Tennessee, cross-complainant, vs. The State of North Carolina, defendant. Cross-bill. Answer to cross-bill.

[Endorsed:] Supreme Court U. S., October term, 1909. Term No. 7, original. The State of North Carolina, complainant, vs. The State of Tennessee. Answer to cross-bill. Filed November 8th, 1909.

119 And on the same day, to wit, the 8th day of November A. D. 1909, an order for appearance was filed in words and figures following, viz.:

Order for Appearance.

Supreme Court of the United States, October Term, 1909.

No. 7, Orig'l.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

The Clerk will enter my appearance as Counsel for the complainant.

F. A. SONDLEY,
Asheville, N. C.

☞NOTE.—Must be signed by a member of the Bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed:] Supreme Court U. S. October Term, 1909. Term No. 7, Orig'l. Appearance for Complainant. Filed Nov. 8, 1909.

120 And afterwards, to wit, on the 20th day of December, A. D. 1909, the following entry appears of record, viz.:

121 Supreme Court of the United States, October Term, 1909.

No. 7, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

On motion of Mr. Charles T. Cates, Jr., of counsel for the defendant, leave is hereby granted to file the replication of the defendant to the answer of the complainant to the cross-bill herein.

December 20, 1909.

On the same day, to wit, on the 20th day of December A. D. 1909, the said motion for leave to file Replication was filed in the words and figures following, viz.:

122 In the Supreme Court of the United States, October Term, 1909.

No. 7, Original.

STATE OF NORTH CAROLINA, Complainant,
vs.
STATE OF TENNESSEE, Defendant.

Motion for Leave to File Replication to Answer to Cross-bill.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now comes the State of Tennessee, by her Attorney General, and moves the Court for leave to file a replication to the answer of the State of North Carolina filed herein to the cross-bill of the State of Tennessee.

CHARLES T. CATES, Jr.,
Attorney General of Tennessee.

Endorsed: Supreme Court U. S. October Term, 1909. Term No. 7, Original. The State of North Carolina, complainant, vs. The State of Tennessee. Motion for leave to file replication to answer to cross-bill. Filed December 20, 1909.

123 And on the same day, to wit, on the 20th day of December A. D. 1909, the Replication of defendant to Answer of Complainant to cross-bill was filed in words & figures following, viz.:

124 In the Supreme Court of the United States, October Term, 1909.

No. 7, Original.

STATE OF NORTH CAROLINA, Complainant,
vs.
STATE OF TENNESSEE, Defendant.

The Replication of the State of Tennessee to the Answer of the State of North Carolina to the Cross-bill of State of Tennessee.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The State of Tennessee, replicant, saving and reserving unto herself all advantages of exception to the insufficiencies of the answer of the State of North Carolina herein filed to the cross bill of this replicant, for replication thereunto says that she will aver and *and* prove her cross bill of complaint in this cause to be true, certain,

and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue and insufficient to be replied to; all of which this replicant is and will be ready to aver and prove as this Honorable Court shall direct, and prays as in and by her said cross bill she has already prayed.

CHARLES T. CATES, JR.,
Attorney General of Tennessee.

Endorsed: Supreme Court U. S. October Term, 1909. Term No. 7, Original. The State of North Carolina, complainant, vs.
125 The State of Tennessee. Replication of defendant to answer of complainant to cross-bill. Filed December 20, 1909.

126 And on the same day, to wit, on the 20th day of December, A. D. 1909, the following entry appears of record, viz.:

127 Supreme Court of the United States, October Term, 1909.

No. 7, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

The motion to set this case down for trial and to fix the method of trial was submitted to the consideration of the Court on printed arguments by Mr. Theodore F. Davidson, Mr. T. W. Bickett, Mr. C. B. Matthews, and Mr. F. A. Sondley in support of the same, and leave was granted Mr. Charles T. Cates, Jr., of counsel for the defendant to file objections thereto.

December 20, 1909.

Which said motion and objections are in the words and figures following, viz.:

128 Supreme Court of the United States, October Term, 1909.

No. 7, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE, Defendant.

Motion to Set Down Case for Trial and to Fix the Method of Trial.

And now comes the State of North Carolina, on this the 20th day of December, 1909, — moves this court that this cause be set down for the taking of the proofs which the parties may respectively desire to make upon the issues and contentions raised by the pleadings herein.

And that three commissioners be appointed by this court, one to be nominated by the plaintiff, one by the defendant, and the third by this honorable court, and said persons, when so nominated, are hereby appointed commissioners to ascertain and run the boundary line between the said States of North Carolina and Tennessee, at the places and for the distances where the same are in dispute, as shown by the pleadings herein, and they are hereby authorized and empowered to cause such surveys to be made as in their judgment
129 may be necessary to ascertain and determine the location of the said line, to examine witnesses and receive other proofs that may be competent and material for that purpose, and report the said proofs, surveys, and other matter relating thereto to this court with all reasonable dispatch.

It is further ordered by the court that the said plaintiff and defendant may each file, within thirty days from this date, with the clerk of this court the name and residence of the commissioner so nominated by them respectively, and thereupon this court will nominate and file with the clerk of this court the name and residence of the third commissioners; and before entering upon the discharge of their duties as such commissioner they and each of them shall be and appear before either the clerk of this court or the clerk of the United States Circuit Court within and for either the district of Western North Carolina or the district of East Tennessee, and take an oath to faithfully discharge the duties required of them as such commissioner, which oath shall be transmitted to and filed with the clerk of this court in this cause.

In the event that either the plaintiff or the defendant, or both, shall fail or neglect to nominate and appoint a commissioner on its or their behalf within the time hereinbefore designated, this court will proceed to make such appointment.

STATE OF NORTH CAROLINA,
By T. W. BICKETT,
Attorney General.

C. B. MATTHEWS,
F. A. SONDLEY,
THEO. F. DAVIDSON,
Of Counsel for Plaintiff.

[Endorsed:] Original. No. 7. North Carolina vs. Tennessee. Notice of motion and motion to take proofs and appoint commissioners, etc.

130 Supreme Court of the United States, October Term, 1909.

No. 7, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE, Defendant.

Notice of Motion to Set Down Case for Trial and to Fix the Method of Trial.

The defendant will take notice that on Monday, the 20th day of December, 1909, or as soon thereafter as the matter can be heard, the plaintiff will make motion in the Supreme Court of the United States in the above-entitled suit for leave to proceed to take the testimony which the parties may desire to offer upon the trial of said case; to fix the time for the closing of the taking of the said testimony, and for such further orders as may be meet and proper prescribing the method of taking such testimony.

STATE OF NORTH CAROLINA,
By T. W. BICKETT,
Attorney General.

C. B. MATTHEWS,
F. A. SONDLEY,
THEO. F. DAVIDSON,
Of Counsel for Plaintiff.

Dated the 6th day of December, 1909.

131 Service accepted this the 10th day of December, 1909.
ATTORNEY GENERAL OF TENNESSEE,
By CHARLES T. CATES, JR.

[Endorsed:] Supreme Court U. S. October Term, 1909. No. 7, Or'g'l. The State of North Carolina vs. The State of Tennessee. Motion to set down case for trial and to fix the method of trial, notice and proof of service of same. Filed December 20, 1909.

132 Supreme Court of the United States, October Term, 1909.

No. 7, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE, Defendant.

Objections of Defendant, State of Tennessee, to the Entry of the Order for Appointment of Commissioners Submitted by Complainant, State of North Carolina.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now the defendant, State of Tennessee, and objecting to the entry of the order for the appointment of commissioners at this

time, submitted by complainant, State of North Carolina, shows to your honors:

That this defendant, through her Attorney General, accepted service of notice of a motion, to be this day entered by complainant, "for leave to proceed to take the testimony which the parties may desire to offer upon the trial of said case; to fix the time for
133 the closing of the taking of the said testimony, and for such further orders as may be meet and proper prescribing the method of taking," and defendant has no objection to an order granting leave to complainant to proceed to take testimony, and that complainant be given such time as she deems necessary within which to take testimony to support the averments of her bill, with reasonable time to this defendant to take such testimony as she may be advised to meet complainant's bill and to sustain her cross-bill; but upon appearing in response to said notice defendant saw for the first time the order tendered to the court and providing for the appointment of three commissioners

"to make surveys of the boundary line between the States of North Carolina and Tennessee * * * and to cause such surveys to be made as in their judgment may be necessary to ascertain and determine the location of said line, to examine witnesses and receive other proofs that may be competent and material for that purpose, and report the said proofs, surveys and other matter relating thereto to this court with all reasonable dispatch."

It seems as if the order was printed so as to direct the commissioners

"to ascertain and run the boundary line," etc.

Defendant objects to the appointment of commissioners at this time, believing that the proper practice is for each party to proceed to take such proof as may be desired, and that the proof be submitted to this court for decision as to the location of the true boundary line between the States, and not until then should a commission be appointed to run the line.

134 Defendant further objects to the appointment of a commission, authorized

"to cause such surveys to be made as in their judgment may be necessary to ascertain and determine the location of the said line",

for the reason that this defendant does not deem it proper that any commission should have discretion to determine how many surveys either party might have made to be submitted along with the testimony of the persons making the survey to this court.

In conclusion, defendant suggests that the proper order—and such course was pursued in the case of Virginia *v.* Tennessee and Indiana v. Kentucky—would be to grant complainant leave—such time as may be reasonable—within which to take her proof upon the issues of fact presented by the record, with a reasonable time to defendant to take and file her proof.

Upon the proof so taken, the case will ultimately come on for hearing and the controlling facts essential to the ascertainment of the

true boundary line will be passed upon and adjudicated by this court; and then, but not now, it would be proper to appoint a commission to survey the land and mark it upon the ground and establish permanent monuments.

Respectfully submitted,

CHARLES T. CATES, JR.,
Attorney General of Tennessee.

(Endorsed:) Supreme Court U. S., October Term, 1909. No. 7, Orig'l. The State of North Carolina, Complainant, v. The State of Tennessee. Objections of defendant to motion of complainant for an order appointing Commissioners herein. Filed December 20, 1909.

135 And afterwards, towit, on the third day of January, A. D. 1910, the following order appears of record, viz:

136 Supreme Court of the United States, October Term, 1909.

No. 7, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

It is now here ordered by the Court that the complainant herein is ruled to take and file depositions on its behalf within ninety days and that the defendant be, and it is hereby, ruled to take its depositions on its behalf within ninety days of the conclusion of the taking of depositions for the complainant.

January 3, 1910.

137 And afterwards, towit, on the 18th day of April, A. D. 1910, the following entry appears of record, viz:

138 Supreme Court of the United States, October Term, 1909.

No. 7, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

On motion of Mr. Charles T. Cates, Jr., of counsel for the defendant, leave is hereby granted to file a stipulation of counsel to extend the time for taking the testimony and the manner of taking said testimony.

April 18, 1910.

Which said stipulation is in words and figures following, viz:

139 In the Supreme Court of the United States, October Term, 1909.

No. 7, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE, Defendant.

Stipulation.

It is stipulated herein, by the parties hereto, acting by their Attorneys General, respectively:

1. That depositions may be taken by either party before an officer authorized to take depositions by the laws of the States of North Carolina or Tennessee, upon not less than ten (10) days' notice to the adverse party, and, if taken before an officer having an official seal, no other authorization will be required.

2. That duly authenticated copies of any public record or maps, or official documents may be filed by either party with the Clerk as evidence in the cause, upon furnishing to the adverse party copies thereof, subject to exception to their competency as evidence.

3. That the respective parties shall be authorized to introduce and offer as evidence in this cause the testimony of any witnesses taken and examined in the case of Charles Hebard v. D. W. Belding, M. M. Belding, A. N. Belding, Henry Stix, Nathan Stix, Louis Krohn, D. W. Hyman, Mary Bragg, and R. N. Archer, in the United States Circuit Court for the Northern Division of the Eastern District of Tennessee, No. 1056, whether such testimony was taken in
140 the original case or upon the Bill of Review filed therein; with the understanding, however, that further testimony, either of the witnesses examined in said case or other witnesses, may be introduced supplementary thereto, but without going over the original ground with any witness upon which said witnesses had previously been examined. The testimony of any of said witnesses taken from the record in said case of Hebard v. Belding et al. when filed herein, shall be taken to have the same effect as if taken in this cause under the first paragraph of this stipulation, and subject to all objections and exceptions for irrelevancy or incompetency, or other grounds that may be applicable thereto, with the understanding that these objections or exceptions, however, shall not extend to the fact that said testimony is introduced from another case without the production of the witness and personal examination herein. Such testimony so provided for in this paragraph of this stipulation shall be copied from the official transcripts now on file in the United States Circuit Court of Appeals at Cincinnati, certified by the Clerk of that Court, or agreed upon by the parties hereto as being true copies, or duly certified by the Clerk of the Circuit Court of the United States at Knoxville as being true copies of the testimony of the witnesses on file in said cause in said Court; and this stipulation is to extend permission to either party to select, to

be offered as evidence in this cause, such testimony from said case of Hebard v. Belding et al. as either party hereto may deem material; provided, however, whenever either party to this cause desires to offer herein the testimony of any witness examined in said case of Hebard v. Belding et al., all of the testimony of such witness in said case must be offered herein by such party; and, provided, further that on or before the fifteenth day of July, 1910, notice in writing shall be given by the State of North Carolina to the State of Tennessee of the names of all the witnesses examined in
141 said case of Hebard v. Belding et al. whose testimony the State of North Carolina desires to offer as evidence in this cause, and file a copy of said notice in the office of the Clerk of the Supreme Court of the United States at Washington; and the State of Tennessee, on or before the fifteenth day of November, 1910, shall give a like notice to the State of North Carolina as to the testimony of witnesses in Hebard v. Belding et al. desired to be offered as evidence in this cause.

4. That complainant, the State of North Carolina, shall have until the fifteenth day of July, 1910, within which to take and file her testimony, and the State of Tennessee shall have until the fifteenth day of November, 1910, within which to take and file her testimony, unless for cause shown an extension of time shall be given to either party.

This the 7th day of March, 1910.

T. W. BICKETT,
Attorney General for the State of North Carolina.
CHARLES T. CATES, JR.,
Attorney General for the State of Tennessee.

Endorsed: Supreme Court U. S., October Term, 1909. Term No. 7, Original. State of North Carolina, complainant, v. State of Tennessee. Stipulation as to taking testimony. Filed April 18, 1910.

142 And on the same day, towit, on the 18th day of April A. D. 1910, the following order appears of record, viz:

143 Supreme Court of the United States, October Term, 1909.

No. 7, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

On motion of Mr. Charles T. Cates, Jr., of counsel for the defendant, and in pursuance of a stipulation of counsel for the respective parties this day filed,

It is now here ordered by the Court: 1. That depositions may be taken by either party before an officer authorized to take depositions by the laws of the States of North Carolina or Tennessee, upon not less than ten (10) days' notice to the adverse party, and, if taken

before an officer having an official seal, no other authorization will be required. 2. That duly authenticated copies of any public records or maps, or official documents may be filed by either party with the Clerk as evidence in the cause, upon furnishing to the adverse party copies thereof, subject to exception to their competency as evidence. 3. That the respective parties shall be authorized to introduce and offer as evidence in this cause the testimony of any witnesses taken and examined in the case of Charles Hebard v. D. W. Belding, M. M. Belding, A. N. Belding, Henry Stix, Nathan Stix, Louis Krohn, D. W. Hyman, Mary Bragg, and R. N. Archer, in the United States Circuit Court for the Northern Division, of the Eastern District of Tennessee, No. 1056, whether such testimony was taken in the original case or upon the Bill of Review filed therein; with the understanding, however, that further testimony, either of the witnesses examined in said case or other witnesses, may be introduced supplementary thereto, but without going over the original ground with any witness upon which said witness had previously been examined. The testimony of any of said witnesses taken
141 from the record in said case of Hebard v. Belding, et al., when filed herein shall be taken to have the same effect as if taken in this cause under the first paragraph of said stipulation, and subject to all objections and exceptions for irrelevancy or incompetency, or other grounds that may be applicable thereto, with the understanding that these objections or exceptions, however, shall not extend to the fact that said testimony is introduced from another case without the production of the witness and personal examination herein. Such testimony so provided for in this paragraph of said stipulation shall be copied from the official transcripts now on file in the United States Circuit Court of Appeals at Cincinnati, certified by the Clerk of that Court, or agreed upon by the parties hereto as being true copies, or duly certified by the Clerk of the Circuit Court of the United States at Knoxville as being true copies of the testimony of the witnesses on file in said cause in said Court; and said stipulation is to extend permission to either party to select, to be offered as evidence in this cause, such testimony from said case of Hebard v. Belding et al., as either party hereto may deem material; provided, however, whenever either party to this cause desires to offer herein the testimony of any witness examined in said case of Hebard v. Belding et al., all of the testimony of such witness in said case must be offered herein by such party; and provided further that on or before the fifteenth day of July, 1910, notice in writing shall be given by the State of North Carolina to the State of Tennessee of the names of all the witnesses examined in said case of Hebard v. Belding et al., whose testimony the State of North Carolina desires to offer as evidence in this cause, and file a copy of said notice in the office of the Clerk of the Supreme Court of the United States at Washington; and the State of Tennessee, on or before the fifteenth day of November, 1910, shall give a like notice to the State of North Carolina as to the testimony of witnesses in Hebard v. Belding et al., desired to be offered as evidence in this cause. 4. That Complainant, The State of North Carolina, shall

have until the fifteenth day of July, 1910, within which to take and file her testimony, and the State of Tennessee shall have
145 until the fifteenth day of November, 1910, within which to take and file her testimony, unless for cause shown an extension of time shall be given to either party.

April 18, 1910.

146 And afterwards, to wit, on the second day of February, A. D. 1911, a stipulation for continuance was filed in words and figures following, viz:

147 In Supreme Court of United States, October Term, 1910.

No. 6, Original.

STATE OF NORTH CAROLINA, Complainant,
vs.
STATE OF TENNESSEE.

Agreement of Counsel for Continuance of Case.

In the above entitled cause, it is agreed between complainant and defendant that the case may, subject to the approval of the Court, be continued to the October Term, 1911, of this Court.

CHARLES T. CATES, JR.,
Attorney General of Tennessee.
T. W. BICKETT,
Attorney General of North Carolina.

Endorsed: Supreme Court U. S., October Term, 1910. Term No. 6, Original. State of North Carolina, complainant, vs. State of Tennessee. Stipulation for continuance. Filed February 2, 1911.

148 And afterwards, to wit, on the 20th day of February, A. D. 1911, the following order appears of record, viz:

149 Supreme Court of the United States, October Term, 1910.

No. 6, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

It is ordered by the Court that this cause be, and the same is hereby, continued to the next term per stipulation of counsel.

February 20, 1911

150 And on the same day, to wit, on the 20th day of February, A. D. 1911, the following entry appears of record, viz:

151 Supreme Court of the United States, October Term, 1910.

No. 6, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

On motion of Mr. J. C. McReynolds, in behalf of counsel, leave is hereby granted to file stipulations of counsel as to continuance of cause and as to extending time for taking testimony herein.

February 20, 1911.

Which said stipulation extending time to take testimony is in words and figures following, viz:

152 In Equity. Original, No. 6.

STATE OF NORTH CAROLINA, Complainant,
vs.
STATE OF TENNESSEE, Defendant.

In the above entitled suit in equity, it is stipulated and agreed by and between the complainant and the defendant as follows:

The time for taking testimony in said cause be and is extended as hereinafter set out, namely:

The State of Tennessee shall have until March 1st, 1911, in which to conclude the taking of her testimony.

The State of North Carolina shall have until April 1st, 1911, thereafter in which to take any further testimony which she may wish to offer whether in rebuttal or otherwise.

The State of Tennessee shall have until May 1st, 1911, thereafter in which to take any testimony which she may wish to offer in answer to testimony taken by the State of North Carolina which was not strictly in rebuttal.

The State of North Carolina shall have until June 1st, 1911, thereafter in which to take testimony in rebuttal to any testimony taken by the State of Tennessee subsequent to March 1st, 1911.

CHARLES T. CATES, JR.,
Attorney General of Tennessee.
T. W. BICKETT,
Attorney General of North Carolina.

153 Endorsed: Supreme Court U. S., October Term, 1910. Term No. 6, Original. The State of North Carolina, complainant, vs. The State of Tennessee. Stipulation extending time for taking testimony. Filed February 20, 1911.

154 And on the same day, to wit, on the 20th day of February, A. D. 1911, the following order appears of record, viz:

155 Supreme Court of the United States, October Term, 1910.

No. 6, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE.

On motion of Mr. J. C. McReynolds, in behalf of counsel, leave is hereby granted to file a stipulation of counsel extending the time for taking testimony in this cause, and in pursuance of said stipulation,

It is now here ordered by the Court that the time for taking testimony in this cause be, and the same is hereby, extended as follows, viz: The State of Tennessee shall have until March 1st, 1911, in which to conclude the taking of her testimony. The State of North Carolina shall have until April 1st, 1911, thereafter in which to take any further testimony which she may wish to offer whether in rebuttal or otherwise. The State of Tennessee shall have until May 1st, 1911, thereafter in which to take any testimony which she may wish to offer in answer to testimony taken by the State of North Carolina which was not strictly in rebuttal. The State of North Carolina shall have until June 1st, 1911, thereafter in which to take testimony in rebuttal to any testimony taken by the State of Tennessee subsequent to March 1st, 1911.

February, 20, 1911.

156 And afterwards, to wit, on the 15th day of January, A. D. 1912, a stipulation as to filing and printing testimony was filed in the words and figures following, viz:

157 Supreme Court of the United States.

No. 5, Original.

STATE OF NORTH CAROLINA, Complainant,
vs.
STATE OF TENNESSEE, Defendant.

Stipulation for Filing and Printing Testimony.

In the above entitled cause it is agreed between complainant and defendant that all the evidence taken in the above entitled cause shall be, at once, sent to the Clerk of the Supreme Court of the United States, with directions to have the same printed in accordance with the Rules of the Court.

That each party to this cause shall have the right to prescribe the order in which the testimony offered by it shall be printed and how the maps and exhibits offered by it shall be arranged in the printed record.

T. W. BICKETT,
Attorney General of North Carolina, for Complainant.
CHARLES T. CATES, JR.,
Attorney General of Tennessee, for Defendant.

Endorsed: Supreme Court U. S., October Term, 1911. Term No. 5, Original. State of North Carolina, complainant, vs. State of Tennessee. Stipulation for filing and printing testimony. Filed January 15, 1912.

158 And afterwards, to wit, on the 21st day of August, A. D. 1912, memoranda, by counsel for the complainant, as to printing record, were filed in words and figures following, viz:

159 To the Clerk of the Supreme Court of the United States.

SIR: Pursuant to the terms of the stipulation hitherto filed in the case of North Carolina vs. Tennessee, the same being original case No. 5, with reference to the order in which the testimony introduced on behalf of the State of North Carolina shall be printed, we beg to submit the following memoranda showing the order in which we desire the same to be printed:

I. Pleadings and stipulations filed in the Supreme Court.

II. Proceedings establishing the line in question:

(*a*) An Act by the General Assembly of North Carolina authorizing the appointment of Commissioners to act with the Commissioners appointed by the State of Tennessee, etc. Pages 124 to 126 of bound volume of testimony taken before Commissioner Norvell.

(*b*) An Act of the General Assembly of the State of Tennessee providing for the appointment of three commissioners to meet with the commissioners appointed by the State of North Carolina, etc. Page 247 of bound volume. The act in question was not inserted upon page 247 but the reference there found will enable the Clerk to locate the act in the Statutes of Tennessee and copy it into the record.

(*c*) Report of the commissioners appointed by Tennessee and North Carolina to settle, run and mark the line between said states. Pages 248 to 250 of bound volume.

(*d*) Photograph of the map filed by the commissioners with their report, the same being Plaintiff's Exhibit "A."

(*e*) Stipulation appearing at the bottom of page 533 of bound volume and beginning with the following words: "It is admitted by the parties, etc."

(*f*) Notice appearing on Page 516 of bound volume beginning with the words: "Plaintiff now gives notice to the defendants, etc."

75

160 (*g*) An act to confirm the boundary line between this State and the State of Tennessee. Pages 126 to 129 of bound volumes.

(*h*) An act to establish the boundary line between this State and the State of North Carolina. Pages 250 to 251 of bound volume.

III. Acts of the states involving the location of the state line:

(*a*) Map of Range 6 East Fractional Township 2 North of the Ocoee Land District (Tennessee). The same being Plaintiff's Exhibit 13 and referred to on page 529 of the bound volume.

(*b*) Provisions of the Cherokee (N. C.) Land Law relating to the entry of lands. Sections 2461, 2465, 2466 and 2467 on Pages 179 to 180 of bound volume.

(*c*) Entries and Grants by the State of North Carolina for lands within the disputed area.

Slick Rock:

Page in bound Vol.	Tract No.	Grantee.
2	269	Bryson.
2	405	Bryson.
3	435	Meroney.
3	445	Lyle.
4	479	Harry B. Morris.
4	485	Wm. P. Holder.
5	920	Wm. Johnson.
14	1035	A. N. Colvard.
15	1035	Gilbert & Peet.
21	2015	Mount.
21	440	Robert F. Cook.
22	441	Robert F. Cooper.
22	611	J. J. Turnbill.
23	5054	A. N. Colvard.
23	7296	Samuel Henry.
24	7297	Samuel Henry.
24	7298	"
25	7299	"
25	7501	David Hennessa.
26	7502	"
435) 436(	3512	M. Fain.

Tellico:

436	9084	John Dockery.
437	3748	M. Fain.
439	3747	"
161		
440	3753	M. Fain.
442	3746	"
443	77	"
445	70	"

Page in bound Volume.	Tract No.	Grantee.
447	76	"
448	3744	"
450	72	"
451	3839	"
453	2552	"
455	2565	Fain & Swepson.
456	2571	"
458	2564	"
459	16153	O. Lovingood & S. W. Lovingood.
461	9105	Isaac Lovingood.
462	2131	Joshua Harshaw.
464	10799	Abernethy & Mayfield.
466	13124	A. B. Wells.
467	10800	Hoss, Abernethy & Mayfield.
469	13123	A. B. Wells.
741	16181	O. Lovingood.
472	16182	"
474	1312	Joshua Harshaw.
476	16935	John S. Adams.
477	16936	"
479	16937	"
480	2931	Gilbert & Peet.
482	16179	O. Lovingood.
484	3752	M. Fain.
486	2941	Gilbert & Peet.
487	1722	Wm. S. Gentry.
489	....	John Anderson.
490	....	D. W. Deweese.
492	14121	C. C. Gentry.
493	2208	W. S. Gentry.
495	2945	Gilbert & Peet.
496	2943	"
499	6595	Fain & Gentry.
499	1691	Jonathan McDaniel.
499	6909	M. Fain.
500	6644	"
500	1331	Jacob Loudermilk.
500	1352	M. Fain.
500	1349	"
501	1310	"
501	1312	"
501	1314	"
501	2580	M. Fain.
502	1321	"
502	1317	"
502	7749	"
503	2091	"
503	6908	"
503	7855	Isaac Lovingood.
504	8017	W. D. Hoss.

e in bound Volume.	Tract No.	Grantee.
504	8200	A. B. Wells.
504	4403	Stephen Rhea.
505	4024	Jas. W. Blackwell.
505	5079	M. C. Wilson.
505	4402	S. Rhea.
506	2776	S. Rhea.
506	4090	S. Rhea & S. W. Davidson.
507	7853	G. W. Lovingood & James Cornwell.
507	8515	John S. Adams.
508	8516	"
508	8439	O. Lovingood.
508	8514	J. S. Adams.
509	8469	Poley Cook.
509	8442	O. Lovingood.
509	7994	Hoss.
510	8205	N. Z. Deweese.
510	8439	O. Lovingood.

Evidence of tradition as to the location of the state line introduced by the state of North Carolina (all in bound volume of testimony taken before Commissioner Norvell):

N. G. Phillips	Pages 27 et seq.
William Jenkins	" 44 " "
David A. Hyde	" 93 " "
N. F. Cooper	" 106 " "
Ropetwister	" 110 " "
William Williams	" 187 " "
James Williams	" 198 " "
W. P. Taylor	" 202 " "
V. E. Grant	" 208 " "
E. W. Harrison	" 237 " "
O. P. Williams	" 252 " "
Jasper L. Fain	" 67 " "
A. A. Fain	" 82 " "
John Dockery	" 86 " "
E. R. Hunsucker	" 98 " "
Isaac Lovingood	" 102 " "
D. W. Deweese	" 260 " "

Testimony of surveyors and engineers, prior to finding of Davenport's notes:

D. B. Burns	Pages 267 to 358 bound volume, Exhibits *b*, *c*, and *d*, and *e*.
S. S. Gannett	Pages 369 to 423 bound volume, Exhibit.
R. W. Collett	Page 430 of bound vol. Exhibit *f*.
W. P. Chambers	Pages 213 to 231 bound volume.
James Crisp	Pages 241—bound vol.
F. M. Lovingood	Pages 52 to 64 and 104 bound vol.

John N. McLellon.

VI. Testimony relating to Davenport's notes:

Deposition of W. D. Jones taken at Lenoir, Caldwell County, N. C., April 18, 1911.
Testimony of Mrs. Cilley taken at Hickory, N. C., April 19, 1911.
Testimony of D. B. Burns taken at Asheville, N. C., May 1, 1911. Pages 4 to 97.
Testimony of S. S. Gannett taken at Asheville, N. C., May 1, 1911, Pages 98 to 149.
Resolution of General Assembly of North Carolina, Page 150 et seq. of testimony taken at Asheville, May 1, 1911.
Certified copy of Hyde and Lovingood report introduced at Asheville, May 1, 1911.
Final testimony of D. B. Burns taken at Asheville, November 3, 1911. Pages 1 to 50.
163 Testimony of Mr. Alagle taken at Asheville, November 3, 1911. Pages 52 to 91.

VII. Extracts from the record of the case of Hebard vs. Belding (the same being the case in the Circuit Court of the United States for the Eastern District of Tennessee and involving the location of that part of the line between North Carolina and Tennessee just South of Tennessee River; said testimony being in a separate bound volume filed in accordance with the stipulation between the parties and the pages hereinafter given being the pages in said volume):

(*a*) Stipulation with reference to the use of this testimony; the same being in the files of this case in this court.
(*b*) Notice. Pages 513 to 516 bound volume of Norvell testimony.
(*c*) Extracts made in accordance with stipulation (*a*):
1. Stipulations. Pages 226 to 227; also pages 379 and 383.
2. An act to locate the line between this State and Tennessee. Pages 248 and 249.
3. Report of surveyors to the Secretary of State Pages 250 to 259.
4. Testimony:
E. T. Sanford, Page 277 and Exhibit.
H. S. Hayes, Pages 131 to 153 and Exhibits.
J. C. M. Bogle, Pages 154 to 168.
H. P. Hyde, Pages 187 to 196; also pages 227 to 248.
Reuben Carver, Pages 196 to 201 with Exhibits 1 and 2; also pages 267 to 276.
Dave Orr, Pages 183 to 187.
Sam Sneed, Page 205.
J. S. Maroney, Pages 201 to 202.
Samuel Henry, Page 202.
164 Dr. J. W. Patton, Pages 203 to 205.
James McDaniel, Pages 359 to 361.

John Dockery, Pages 362 to 364; also pages
to 373.
M. L. Brittain, Pages 364 to 366.
James Whitaker, pages 366 to 367.
W. P. Jones, Pages 367 and 368.
W. P. Phillips, Pages 368 to 370.
Stephen Whitaker, Pages 370 and 371.
C. C. Jones, Pages 374 to 378.
R. B. Mashburn, Pages 406 to 418 and Exhi
on Page 419.

5. Entries and Grants. Pages 260 to 267; Pages
to 354.

[On left margin:] Upon the objections of the State of Tenn.
matters under paragraph No. VIII of these instructions are w
drawn and are not to be printed at all.

T. W. BICKETT,
Atty Gen. N. C

VIII. Extracts from the record of the case of Stevenson et al.
Fain et al. (the same being case in the Supreme Court
the United States, October term, 1904, and involving
location of that part of the line between North Carolina
Tennessee between County Corner and Jenks Knob, at
head of Tellico; all reference being to transcript of rec
of said case, filed July 25th, 1902, and No. 18,621):

Caption. Page 1.
Cost Bond. Pages 1 and 2.
Bill of Complaint. Pages 2 to 5.
Answer. Pages 12 to 17.
Replication. Pages 17 to 18.

Evidence for complainants:
Depositions of
Oscar W. Moller, Pages 18 to 24.
W. D. Hale, Pages 24 to 44.
H. J. Merwin, Pages 85 to 88.
B. Frank Payne, Pages 89 to 94.
H. Houston Miller, Pages 94 to 97.
John A. Miller, Pages 97 and 98.
W. D. Hale (recalled), Pages 112 to 118 includi
Exhibits "Q" and "R."
Zimri Roberts, Pages 118 to 122.

Evidence for defendants:
Depositions of
C. M. Watson, Pages 45 and 46.
Jasper L. Fain, Pages 46 to 58.
A. A. Fain, Pages 58 to 61.
E. R. Hunsucker, Pages 62 and 63.
F. M. Lovingood, Pages 64 to 68.
John R. McClelland, Pages 68 to 72.

Dr. J. W. Patton. Pages 100 to 103.
F. P. Axley. Pages 103 and 104.
Jasper L. Fain. Pages 104 and 105.
Francis Lovingood. Pages 105 and 106.
Isaac Lovingood. Pages 106 and 107.
165 B. F. Lovingood. Pages 107 and 108.
R. A. Wilson. Pages 108 to 110.
Opinion of Clark, Judge. Pages 235-238.
Decree. Page 238.
Petition on Appeal. Page 239.
Assignment of Errors. Pages 241 and 242.
Decree. Page 245.
Opinion (including map). Pages 245 to 256.
Petition for Appeal. Page 256.
Order allowing Appeal. Page 256.
Assignment of Errors. Page 257.

T. W. BICKETT,
Att'y Gen.

(Endorsed:) 4 Orig'l 12. Office of the Clerk Supreme
U. S. Received Aug. 21, 1912.

And on the same day, to wit, on the 21st day of August
1912, the evidence for the Complainant was opened and filed
said evidence, arranged in accordance with directions of
is in the following words, viz:

166 *Evidence for Complainant.*

The plaintiff offers in evidence, and asks leave to copy,
of the General Assembly of North Carolina, passed in the yea
authorizing the appointment of a commission on the part
State of North Carolina to act with the Commissioners appoi
the State of Tennessee to run the boundary line between said
which said Act will be found printed in volume 2 of the
Statutes of North Carolina (1837) on pages 94, 95 and is-
following words and figures, to-wit:

167 Whereas it is essential to the interest of this State
disposal of lands lately acquired by treaty from the I
and to the continuance of the good understanding now
subsisting between this State and the State of Tennessee, t
boundary line between the two states should be accurately r
tinctly marked, and permanently established.

I. Be it enacted, &c. That the governor shall, and he is
authorized to appoint three commissioners to meet the commi
who may be appointed by the state of Tennessee, at such ti
place as may by the said commissioners, or by a majority
representing the respective states, be agreed on, and with t
settle, run and mark the boundary line between this State
state of Tennessee, agreeably to the true intent and meaning
act of the General Assembly of this State, entitled, "An act

purpose of ceding to the United States of America certain western lands therein described."

2. Be it further enacted, That the governor, as soon as may be after the passing of this act, shall give notice thereof to the governor of the state of Tennessee, and shall request the appointment of commissioners on the part of the said state, to act with those appointed by this State in ascertaining, running and marking the boundary line between the two States; and this State will at all times hereafter, ratify and confirm all and whatsoever the said commissioners, or a majority of those of each state shall do, in and touching the premises, and the same shall be binding on this State.

3. Be it further enacted, That if it shall so happen that commissioners shall not be appointed by the state of Tennessee, to act with the commissioners of this State in amicably ascertaining and marking the boundary line between the states; or if it shall happen that the commissioners appointed by the State of Tennessee shall refuse to act with the commissioners on the part of this State, the commissioners on the part of this State are hereby authorized and required to proceed in running and marking said line from the Smoky Mountain, where the line terminated which was run the year one thousand seven hundred and ninety-nine, under the
168 direction of Joseph M'Dowell, Mussedine Matthews, and David Vance, commissioners appointed by the act of the General Assembly of this State, passed in the year one thousand seven hundred and ninety-six, for running and marking the said line to the thirty-fifth degree of north latitude, according to the courses designated in the act of seventeen hundred and eighty-nine, entitled "An act for the purpose of ceding to the United States of America, certain western lands therein described." And the commissioners on the part of this State shall cause an accurate plan of said boundary line to be made, specifying the courses, distances, natural and artificial marks thereof, and return the same to the General Assembly of this State.

4. Be it further enacted, That in the case of the death, refusal to act, or resignation of any of the commissioners hereby appointed, the governor is hereby authorized and required, as speedily as may be, to appoint another commissioner or commissioners in the place of such as may have died, resigned or refused to act.

169 An Act to provide for the appointment of Commissioners on the part of this state, to co-operate with the Commissioners appointed by the General Assembly of the state of North Carolina, to run and mark the boundary line between this state and the said state of North Carolina.

SEC. 1. Be it enacted by the General Assembly of the State of Tennessee, That the Governor shall be, and he is hereby, authorized, to appoint three Commissioners, to meet the Commissioners who have been or may be appointed by the state of North Carolina, at such time and place, as may by the said Commissioners, or by a majority of those representing the respective states be agreed on, and with them to settle, run and re-mark the boundary line between this state and the state of North Carolina, agreeably to the true

intent and meaning of the said act of the General Assembly of the state of North Carolina, entitled "an act for the purpose of ceding to the United States of America, certain western lands therein described", commonly called the cession act.

SEC. 2. Be it enacted, That the Governor, as soon as may be, after he shall have appointed the Commissioners contemplated by this act, shall give notice thereof to the Governor of the State of North Carolina of the passage of this act, together with the persons by him appointed to act with the Commissioners of that state.

SEC. 3. Be it enacted, That whatsoever the said Commissioners, or a majority of those of each state, shall do in and touching the premises, shall be binding on this state.

SEC. 4. Be it enacted, That in case of the death, refusal to act, or resignation of any of the Commissioners hereby appointed, the Governor is hereby authorized and required, as speedily as may be, to appoint other Commissioners or Commissioner in place of such as may have died, resigned, or refused to act.

SEC. 5. Be it enacted, That the Commissioners appointed
170 under this act, or by the Governor, under the authority thereof, shall be allowed for their personal services, the sum of five dollars per day and the said Commissioners, or a majority of them, are hereby authorized to employ such surveyor or surveyors, and such chain bearers and markers as they, or a majority of them, shall deem necessary. Each surveyor so appointed shall be allowed five dollars per day; each chain carrier and marker shall be allowed two dollars and fifty cents per day; said commissioners, surveyors, chain bearers and markers bearing their own expense.

SEC. 6. Be it enacted, That to enable said Commissioners to make advances to the persons employed by them during the progress of said running, and to compensate them at the close thereof, the Governor, by his warrant, shall direct the Treasurer to pay said Commissioners, upon their notifying him, that they are ready to proceed to the discharge of the trust hereby reposed in them, the sum of five hundred dollars, and said Commissioners shall account for their application of said money to the succeeding General Assembly.

JAMES FENTRESS,
Speaker of the House of Representatives.
R. WEAKLEY,
Speaker of the Senate.

July 28, 1820.

171 The plaintiff also offers in evidence the report of the commissioners appointed by the States of North Carolina and Tennessee, which said report is in the following words and figures, to-wit:

"To His Excellency, Joseph McMinn, Governor of the State of Tennessee:

The undersigned Alexander Smith, Isaac Allen, and Simeon Perry, Commissioners on the part of the State of Tennessee; and James Mebane, Montford Stokes and Robert Love, Commissioners

on the part of the State of North Carolina, duly appointed under the Acts of Legislatures of the said States respectively; having met at the town of Newport in the State of Tennessee on the 16th day of July A. D. 1821, to settle, run and mark the dividing line between the two states, from the termination of the line run by McDowell, Vance and Matthews in the year of our Lord 1799, to the Southern Boundary of the said States, Respectfully Report, That we proceeded to ascertain, run and mark the said dividing line as designated in the XIth Article called the Declaration of Rights, of the Constitution of the State of Tennessee, and in the Act of the General Assembly of the State of North Carolina; entitled "An act for the purpose of ceding to the United States of America, certain Western lands therein described, passed in 1789;—Which said dividing line as run by us, Begins at a stone set up on the north side of the Catalouchee Turnpike Road, and marked on the west side *of* Ten. 1821; and on the east side, N. C. 1821, running thence a southwestwardly course to the Bald Rock on the summit of the Great Iron or Smoky Mountain, and continuing southwestwardly to the extreme height thereof to where it strikes the Tennessee River about seven miles above the old Indian Town of Tallahassee, crossing Porter's Gap at the distance of twenty-two miles from the beginning; passing Meig's boundary line at thirty-one and a half miles;—the Equonettly path at fifty-three miles;—and crossing Tennessee River at sixty-five miles from the beginning. From the Tennessee River to the main ridge and along the extreme height of the same to the place where it is called the Unicoy or the Unaka Mountain, striking the old trading path leading from the Valley Towns to the Overhill Towns, near the head of the
172 west fork of Tellico River, and at the distance of ninety-three miles from the beginning. Thence along the extreme height of the Unicoy or Unaka Mountain to the southwest end thereof at the Unicoy or Unaka Turnpike road, where a corner stone is set up, marked Ten on the west side and N. C. on the east side; and where a hickory tree is also marked on the south side Ten. 101 m. and on the north side N. C. 101 m. being one hundred and one miles from our beginning. From thence a due course south two miles and two hundred and fifty-two poles to a spruce pine on the north bank of the Highwassee River, below the mouth of Cane Creek; thence up the said river the same course about one mile; and crossing the same to a maple marked W. D. and R. A. on the south bank of the river; thence continuing the same course due south eleven miles and two hundred and twenty-three poles to the Southern Boundary line of the states of Tennessee and North Carolina; making in all one hundred and sixteen miles and two hundred and twenty-three poles from the beginning; and striking the Southern Boundary line twenty-three poles west of a tree in said line, marked 72 m.—where we set up a square post marked on the west side Ten. 1821; and on the east side N. C. 1821 and on the south side G. The said dividing line run by us in its whole length is distinctly marked with two chops and a blaze on each fore-and-aft tree, and three chops on each side line tree; and mile marked at the end of each mile; agreeably to the plats which accompanies this Report, and

MAPS

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which said plats and Reports are certified by us in duplicate, one for each of said states, in the same words, marks the figures; which we respectfully submit to the Governors of the said states of Tennessee and North Carolina.

Given under our hands at Knoxville in the State of Tennessee, on the 31st day of August, A. D. 1821.

A. SMITH.
ISAAC ALLEN.
SIMEON PERRY.
Commissioners of Tennessee.
JAMES MEBANE.
M. STOKES.
R. LOVE.
Commissioners of N. Carolina."

(Here follows map, p. 173.)

174 It is admitted by the parties that the plaintiff has caused thorough searches to be made of the public office at the Capitol in Raleigh, by the proper officials, and that no original or copy of the plat and survey thereof of the Commissioners who ran the line under the Act of 1819 and survey in 1821, or the field notes of the same, can now be found.

175 The plaintiff now gives notice to the defendant that it will on the first day of the next term of the Supreme Court of the United States, in the Hall of the said Court, move for an order in this cause, directing the defendant to produce upon the hearing of the said cause in said Court, the original of the plat or map, now in its pos-session, of the survey of the boundary line between the said states by the Commissioners appointed by the respective states for that purpose, under the Act of the General Assemblies of the said states in the years 1819-1820, said surveys having been made in the year 1821.

176 The Plaintiff also offers in evidence and asks leave to copy the act of the General Assembly of North Carolina passed in the year 1821, entitled "An act to confirm the boundary line between this State and the State of Tennessee, and for other purposes." This act will be found in the Revised Statutes of North Carolina, Vol. II, page 96 and 97, and is in the following words and figures, to-wit:

1. Whereas the states of Tennessee and North Carolina, by their respective commissioners duly authorized for that purpose, have run and marked the boundary line between the said states, in conformity with their several instructions, and being legally authorized by the states to which they respectively belong: beginning where M'Dowell, Vance and Matthews terminated their line between the two states in the year one thousand seven hundred and ninety nine, and agreeably to the act of the General Assembly, entitled "An act for the purpose of ceding to the United States of America certain western lands therein described," passed in one thousand seven hundred and eighty nine; and in the eleventh article, called the Declaration of rights of the constitution of the state of Tennessee; which said dividing line, as run by the respective commissioners, beginning at a stone set up on the north side of the Catalouche turnpike road, and marked on the east side, N. C. one thousand eight hundred and twenty one, and on the west side Ten. one thousand eight hundred and twenty-one; running thence a southwestwardly course to the Bald Rock, on the summit of the great Iron or Smoky mountain, and continuing southwestwardly on the extreme height thereof to where it strikes Tennessee river, about seven miles above the old Indian town Tellassee, crossing Porter's Gap at the distance of twenty two miles from the beginning, passing Meig's boundary line at thirty-one and a half miles, the Equinottey Path at fifty three miles, and crossing Tennessee river at the distance of sixty five miles from the beginning, from Tennessee river to the main ridge, and along the extreme height of the same to the place where it is called Unacay or Unaka mountain, striking the old trading path leading from the valley towns to the overhill towns, near

the head of the west fork of Tellico river, and at the distance
177 of ninety three miles from the beginning; thence along the extreme height of the Unacay or Unaka mountain to the southwest end thereof at the Unacay or Unaka turnpike road, where a corner stone is set up marked N. C. on the east side, and Ten. on the west side, and where a hickory tree is also marked on the north side N. C. 101 m. and the south side Ten. 101 m. being one hundred and one miles from the beginning; from thence a due course south, two miles and two hundred and fifty two poles, to a spruce pine on the north bank of Highwassee river, below the mouth of Cane creek; thence up the said river the same course about one mile, and crossing the same to a maple marked W. D. and R. A. on the south bank of the river; thence continuing the same course due south eleven miles, and two hundred and seventy three poles to the southern boundary line of the states of North Carolina and Tennessee, making in all one hundred and sixteen miles and two hundred and twenty poles from the beginning; and striking the southern boundary line twenty three poles west of a tree in said line marked 72 m. to a square on the east side N. C. 1821, on the west side Ten. 1821, and on the south side G. The whole distinctly marked with the two chops and a blaze on each fore and aft tree, and three chops on each side line tree, and mile marked at the end of each mile; which line was run under the joint superintendence of commissioners appointed by the states of North Carolina and Tennessee, and a surveyor on the part of the commissioners of each state aforesaid.

2. Be it enacted, &c. That said boundary line as described in the foregoing preamble, be, and the same is hereby fully established, ratified and confirmed as the boundary line between the states of North Carolina and Tennessee forever.

3. Be it enacted. That a line run and known by the name of Montgomery's line, beginning six hundred and sixty one yards due south of the termination of the line run by commissioners on the part of this State and the state of Georgia, in the year one thousand eight hundred and nineteen, ending on a creek near the waters of Shooting creek waters of the Highwassee, then along Mont-
178 gomery's line till it strikes the line run by commissioners on the part of North Carolina and Tennessee, in one thousand eight hundred and twenty one, to a square post marked on the east side N. C. 1821, on the west side Ten. 1821, and on the south side *side* G. be, and the same is hereby declared to be the boundary line between this state and the state of Georgia, so soon as the above line shall be ratified on the part of the state of Georgia, and the executive of this state officially informed thereof, then, the above line shall be and forever remain the dividing line between the two states of North Carolina and Georgia; any law to the contrary notwithstanding.

179 The plaintiff also offers in evidence the Act of the General Assembly of the State of Tennessee, being chapter 35 of the Acts of 1821, entitled "An act to establish the boundary line between this State and the State of North Carolina," being the same act cited and referred to in the Cross-Bill of the defendant in

this action, which said act is in the following words and figures, to-wit:

"SECTION 1. Be it enacted, etc., That the dividing line run and marked by Alexander Smith, Isaac Allen and Simeon Perry, commissioners, for and on behalf of this State; and James Mebane, Montford Stokes and Robert Love, commissioners for and on behalf of the State of North Carolina; which dividing line as run by said commissioners, begins at a stone set up on the north side of the Catalouchee Turnpike Road, and marked on the west side Ten. 1821, and on the east side N. C. 1821; running thence on a southwestwardly course to the Bald Rock, on the summit of the Great Iron or Smoky Mountain, and continuing southwestwardly on the extreme height thereof to where it strikes Tennessee River about seven miles above the old Indian town of Tellassee, crossing Porter's Gap, at the distance of twenty-two miles from the beginning, passing Meig's boundary line at thirty-one and a half miles, the Equonettly path at fifty-three miles and crossing Tennessee River at the distance of sixty-five miles from the beginning; from Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called Unicoy, or Unaka Mountain, striking the old trading path leading from the Valley Towns to the Overhill Towns, near the head of the west fork of Tellico River, and at the distance of ninety-three miles from the beginning, thence along the extreme height of the Unicoy or Unaka Mountain to the southwest end thereof, at the Unicoy or Unaka Turnpike Road, where a corner stone is set up marked Ten. on the west side and N. C. on the east side, and where a hickory tree is also marked on the south side Ten. 101 M. and on the north side N. C. 101 M. being one hundred and one miles from the beginning; from thence a due course south, two miles and two hundred and fifty-two poles to a spruce pine on the north bank of the Hiwassee River, below
180 the mouth of Cane Creek; thence up the said river the same course, about one mile, and crossing the same to a maple marked W. D. and R. A. on the south bank of the river; thence continuing the same course due south eleven miles and two hundred and seventy-three poles to the southern boundary line of the State of Tennessee and North Carolina, making in all one hundred and sixteen miles and two hundred and twenty-three poles from the beginning; and striking the southern boundary line twenty-three poles west of a tree in said line marked 72 M. where was set up by said Commissioners a square post marked on the west side Ten. 1821 and on the east side N. C. 1821, and on the south side G. be and the same is hereby ratified, confirmed and established as the true boundary line between this State and the State of North Carolina."

(Here follows map, p. 181.)

182 Sec. 2464. Office of entry-taker established in Cherokee 1852, c. 119, s. 1:

An entry-taker's office shall be opened in the county of Cherokee, for the entry of vacant lands in said county, and an entry-taker shall be elected as is required in other counties of this state, and until such election shall be made, the governor shall have the power to appoint some suitable person, resident in said county, to discharge the duties of said office as hereinafter directed.

Sec. 2465. When, how and at what price lands may be entered, 1852, c. 119, s. 2:

From the first day of February, one thousand eight hundred and fifty-three, till the first day of June thereafter, any one may enter any of the unsold lands in said county at the rate of fifty cents per acre, and thereafter any land remaining may be entered at the rate of twenty cents per acre for the next three months from the first day of June; and thereafter all of said unsold lands that may be unentered may be entered at ten cents per acre for twelve months, and thereafter at the same rates of other vacant lands in this state.

Sec. 2466. Persons entering lands to file their bonds with the entry-taker, &c. 1852, c. 119, s. 3:

It shall be lawful for all persons entering vacant lands in said county of Cherokee to file their bonds, with approved security, with the entry-taker, payable to the state in four equal annual instalments, which shall, when paid, be in full of the purchase money for the tract or tracts so entered, and upon proof of such payment as herein provided the secretary of state shall issue the grant or grants according to the entry and survey thereon, and in case the land shall have been surveyed by authority of the state, the grant shall issue according to the survey so made, and not otherwise, and no portion of any tract so surveyed shall be granted without the whole.

183 Sec. 2467. What grants governor may sign. 1852, c. 119, s. 4:

The governor shall sign no grants on entries and surveys made under this chapter, unless as much as fifty acres shall be included in each survey, and unless such survey shall be a square rectangle not more than twice as long as wide.

184 "STATE OF NORTH CAROLINA:

J. H. Bryson,
H. Smith,
G. Morris, Jr.

James H. Bryson, Henry Smith, and Gideon Morris, Jr., enters and locates 640 acres of land, in Cherokee County in the 9 District, beginning on a chestnut oak, on the South side of Slick Rock creek.

No. 269.
Entered March 12th. 1853.
640 acres.

March 12, 1853, Wt.

JAMES H. BRYSON,
HENRY SMITH,
GIDEON MORRIS, JR.

Wt. issued May 21, 1853.

NORTH CAROLINA,
Cherokee County:

J. H. Bryson,
No. 405
Entered 640
acres.
Mar. 18, 1853.

James H. Bryson, enters and locates Six Hundred and forty acres of land in Cherokee County on the waters of Tennessee river and Slick Rock creek, beginning on a chestnut, on the North side of the said creek, above the mouth of the same, and to run from thence various courses for complement, to be surveyed and located according to law.

Mar. 17th, 1853.

JAMES H. BRYSON.

Warrant issued May 3, 1853."

The plaintiff next offered in evidence a copy of the field notes of J. W. C. Piercey, County Surveyor of Cherokee County, North Carolina, in the following words and figures:

185

Clinton Henderson,
S. E. Hudson,

"405. J. H. Bryson, 405, beginning on a large chestnut on the north side of Slick Rock Creek, runs S. 53 E. 226½ p. to a small hickory on the side of mountain; then S. 53 W., crossing the Tellassee old trail at 9 outs and 6 pins 452 P. to a maple on the S. E. side of a ridge; then N. 53 W. 226½ P. to a stake in the state line N. 53 E. 452 P. to the beginning.

May 23, 1853.

G. F. MORRIS, *M.*"

"March 21, 1853, 640 acres.

CHEROKEE COUNTY,
North Carolina:

W. H. Meroney.
No. 435.
Entered
Mar. 21, 1853.
640 acres.

William H. Meroney, enters six hundred and forty acres of land, beginning on the Rock Stack where the state line crosses it, running various courses for complement including the headwaters of Slick Rock Creek, said Creek being the waters of Tennessee River. Entered according to the Acts of Assembly in 1852.

W. H. MERONEY.

Wt. issued May 4, 1853."

J. M. Lyle.
No. 445.
Entered Mar.
23, 1853.
640 acres.

"J. M. Lyle, enters 640 acres of land in the County of Cherokee, State of North Carolina, on the waters of Tennessee River, beginning at a stake on the line which divides the states of North Carolina and Tennessee, at or near Slick Rock Creek, 340 rods above the place where the old Indian trail leading from Tellassee old town, in the State of Tennessee, to Cheowee, in

North Carolina, crosses the said State line; thence with the said state line up the creek and various courses for complement.

Mar. 23, 1853.

J. M. LYLE."

186

H. R. Morris. No. 479. Entered April 6, 1853. 640 acres.

"Harry R. Morris Enters six hundred and forty acres of land on the waters of Slick Rock Creek in Cherokee County, North Carolina, beginning on a stake and running various courses for complement.

April 6, 1853.

H. R. MORRIS.

Warrant issued May 6, 1853."

W. P. Holder and Company. No. 485 Entered April 7, 1853. 5,000 acres.

"William P. Holder enters five thousand acres of land in Cherokee County, North Carolina, beginning on the Southwest bank of Tennessee river, where the State line of Tennessee and North Carolina crosses said river; thence with the said State line Southwesterly and various courses, so as to include the land lying between the said state line and the Tennessee river, for complement.

April 7, 1853.

WILLIAM P. HOLDER & CO.

Wt. issued May 6, 1853."

"STATE OF NORTH CAROLINA.

Cherokee County:

Wm. Johnson. No. 920. Entered 2,000 acres. June 1, 1853.

William Johnston enters and locates two thousand acres of land, beginning where the North Carolina and Tennessee line crosses the Tennessee river, beginning on a spruce pine, running various courses for complement.

June 1st, 1853.

WM. JOHNSTON.

Warrant issued August 10, 1853.

Duplicate Warrant issued September 28, 1881.

N. G. HOWELL, *E. T.*"

187

A. N. Colvard. No. 1035. Entered 25,000

"A. N. Colvard enters twenty five thousand acres of land in Cherokee County, North Carolina, in District No. 10, beginning on a beech tree near the Hangover Mountain at or near the state line, runs east; then, so as to run with the Hangover Mountain to the Cheoa River; then with the said river to the mouth, then with the Tennessee River to the state line; then

acres.. with the state line to the beginning, and
June 1, 1853. various courses for complement.
Bonds filed June 1, 1853.
July 1, 1856.
A. N. Colvard. A. N. COLVARD.
T. H. Calloway.
S. G. R. Mount. Wt. issued August 13, 1853.
Issued October 4, 1860.
Duplicate issued May 15, 1887."

The plaintiff then offered in evidence the original field notes of J. W. C. Piercey, County Surveyor of Cherokee County, North Carolina, of the survey of the last named entry, of which the following is a copy:

"Beginning on a beech tree on the state line where the Hangover Mountain strikes the said line near the corner of No. 5051, and runs with that line S. 80 E., 320 poles, to a mountain oak; then with the line of No. 4455 N. 40 E., 320 poles, to a spanish oak; then N. 45 E. 28 poles, to two water oaks; then E. 92 poles to a large oak on top of the second high peak of the Hangover; then S. 70 E., 98 poles, to a spanish oak; then S. 20 E., 150 poles, then E., 160 poles, to a spanish oak on a rock; then E. 60 poles to a hickory; then with the meanders of the said mountain N. 70 E., 250 poles to a corner of No. —, then S. 70 E., 320 poles to a spanish oak, then S. 50 W. 420 poles; then N. 65 E., 40 poles, then N. 75 E., 126 poles; then N. 40 E., 260 poles; then E., 54 poles, then N. 55 E., 160 poles; then N. 65 E., 100 poles; then N. 40 E., 60 poles; then N. 50 E. 124 poles to a service three on the bank of the Cheowee River; then down the river with its meanders to the Ten-
188 nessee River; then down the said river to the state line at the mouth of Slick Rock Creek; then with the state line to the top of the Rock Stack; then with said line 1,207 poles to the beginning.

April 17, 1856.

J. W. C. PIERCEY, *C. S.*

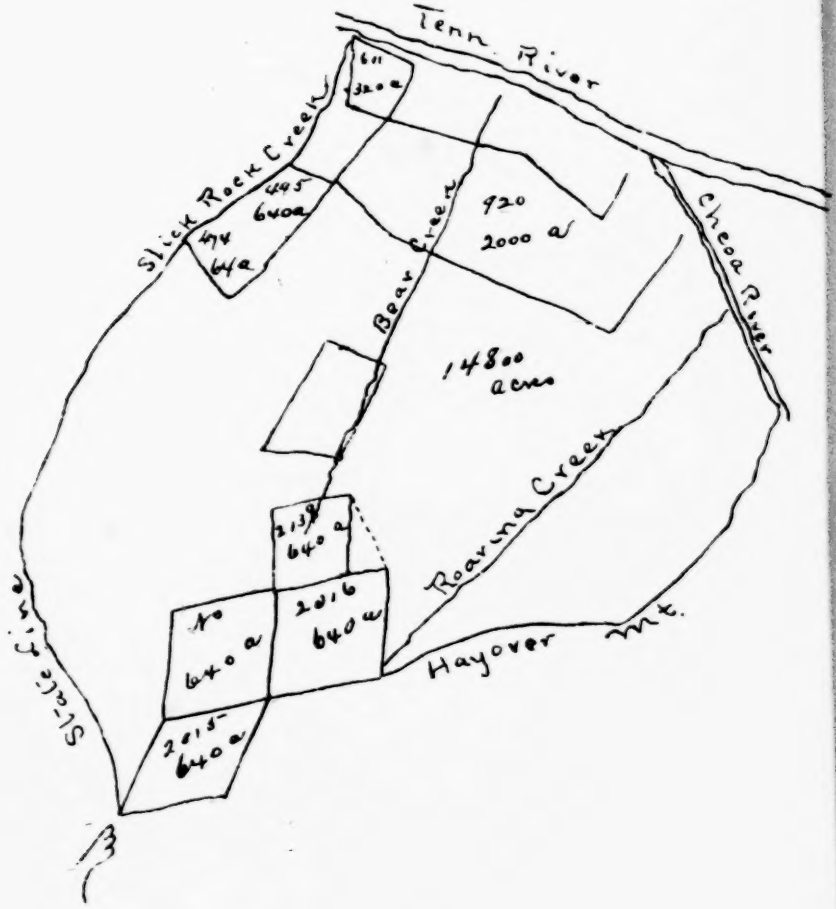
C. B., JASPER RODGER,
WM. CARRINGER,
F. M. MOSS, *M.*

With several tracts platted out. No. —, 16,978 acres."

The plaintiff also offered the out-line sketch, or plat, of the said survey appearing on the opposite page of the said field notes, showing the lines and streams called for, a copy of which is hereto attached as a part of this evidence, and marked "Plaintiff's Exhibit No. 20."

(Here follows plat marked page 188*a*.)

Plaintiff Exhibit No 20.



1882

The plaintiff offered in evidence a certified copy of a grant from the State of North Carolina to Lyman W. Gilbert and W. H. Peet for the lands embraced in the foregoing entry and survey, No. 1035, said grant being No. 2336, dated December 9th, 1860, with certificate of survey thereto attached, which said grant is marked "Plaintiff's Exhibit No. 3" and is in the following words and figures, to-wit:

188*a*

189 Scale 400 poles per inch.

STATE OF N. CAROLINA.
Cherokee County:

By virtue of a warrant, No. 1035, issuing from the Entry Taker of said County, I have surveyed for A. N. Colvard a certain Tract of land lying in said County in District No. 10, Beginning on a beech tree on the State line, where the Hangover mountain strikes said line, near a corner of No. 5051, & runs with said line S., 80 E., three hundred and twenty poles to a mountain oak; then with the line of No. 4455 N. 40 E. three hundred and twenty poles to a spanish oak; then N. 45 E., Twenty eight poles to two water oaks; then E., ninety two poles to a large rock on the top of the second high peak of the Hangover; then down the ridge with its meanders to a Service tree on the Bank of the Cheoah River; then down said River & its meanders to the Tennessee River; then down the same and its meanders to a corner of No. 611, at the mouth of slick rock creek & the State line; then up said creek with the State line to the top of the mountain, to a locust on said line; then with said line and its meanders to the Beginning, containing Fourteen Thousand Eight Hundred acres more or less with *with* eight several tracts platted out as doth appead on the plat. Surveyed April 17th, 1856.

C. B. JASPER RODGERS.
F. N. MOSS, *M.*
J. W. C. PIERCY, *C. S.*

190 (No endorsement)

I do hereby certify that A. N. Colvard was the purchaser of tract No. 1035, at three thousand three hundred & fifty five 60/100 Dolls. $3,355.60.

D. F. RAMSOUR, *E. T.*

July 1, 1856.

191 STATE OF NORTH CAROLINA.
Cherokee County:

No. 1035.

Entry Office of Claims for Lands in the County of Cherokee.

To the Surveyor of said County, Greeting:

You are hereby directed and required, as soon as may be, to lay off and survey for A. N. Colvard twenty-five thousand acres of land in Cherokee County North Carolina in Dist. No. 10, Begin-ing on a Beech tree near the Hangover Mountain, at or near the State line, running east so as to run with the Hangover Mountain, to Cheoah River; then with the said river to the mouth; then with the Tennessee river to the State line; then with the said line to the beginning & various courses for complement.

Entered the 1 day of June, 1853, observing the direction of the Act of the Assembly in such case made and provided for running out lands, two just and fair plans of such survey, with a proper Certificate annexed to each, you are to make to be transmitted, together with this warrant, to the Secretary's office.

Given under my hand and seal, at office, the 5th day of Oct., A. D. 1860.

D. F. RAMSEUR, [SEAL.]
Entry-Taker.

Duplicate Warrant.

(Endorsement.)

For value recd. I, A. N. Colvard, sell and assign to L. W. Gilbert & Wm. H. Peet, them and their heirs and assigns forever, the within described tract of land No. 1035, and authorize the Secretary of State to issue a grant to the said L. W. Gilbert & Wm. H. Peet whenever they shall pay the purchase money therefor. Witness my hand and seal this the 10th Sept. 1860.

A. N. COLVARD.

Attest:
N. B. CHAMBERS.

192 $878.48. AGENCY OFFICE, 14*th April*, 1860

Received of A. N. Colvard, Pr. N. S. Jarrett, eight hundred and seventy-eight dollars & 48 cents, in full of the 3rd installment for — acres of land by him entered in the County of Cherokee as by the warrant of survey No. 1035.

JACOB SILER, *Agent.*

$2345.37 AGENCY OFFICE, *September* 12, 1868.

Received of A. N. Colvard, pr. W. S. Callaway, two thousand, three hundred and forty-five dollars, 37 cts., in full of the 1st, 2nd &

4th instalment- for — acres of land by him entered in the County of Cherokee as by the warrant of survey No. 1035.

JACOB SILER, *Agent.*

Total Payment, the 3rd installment being previously paid.

Book 163, Page 302.

STATE OF NORTH CAROLINA:

No. 2336.

Know ye that we have granted unto L. W. Gilbert and W. H Peet fourteen thousand and eight hundred acres of land in Cherokee County, in District No. 10. Beginning on a beech tree on the State line, where the Hangover Mountain strikes said line, near a corner of No. 5051, and runs with said line, South eighty East, three hundred and eighty poles, to a mountain oak; then with the line of No. 4455, North forty East, three hundred and twenty poles, to a Spanish oak; then North, forty-five east twenty-eight poles, to two water oaks; then East, ninety-two poles, to a large rock on the second high peak of the Hangover; then down the ridge with its meanders to a service tree on the bank of the Cheowah river; Then down said river and its meanders to the Tennessee River; then down
193 the same and its meanders to a corner of No. 611, at the mouth of Slick Rock creek and the State line. Then up said Creek with the State line to the top of the mountain to a locust on said line; then with the said line and its meanders to the Beginning Entered 1st June, 1853. To hold to the said L. W. Gilbert and W. H. Peet their heirs and assigns forever.

Dated 19th December, 1860.

JOHN W. ELLIS.

RUFUS H. PAGE, *Secretary.*

STATE OF NORTH CAROLINA,
OFFICE OF SECRETARY OF STATE,
RALEIGH, *Oct. 3rd*, 1906.

I, J. Bryan Grimes, Secretary of State of the State of North Carolina, do hereby certify the foregoing and attached (Four (4) sheets) to be a true copy from the records of this office.

In witness whereof, I have hereunto set my hand and affixed my official seal.

Done in office at Raleigh, this 3rd day of October, in the year of our Lord 1906.

J. BRYAN GRIMES,
Secretary of State.

State of North Carolina, Department of State, May 20, 1775, Esse quam videri.

194

S. G. R. Mount.
No. 2015.
Enters 640 acres.
September 1, 1853.
Bonds filed by
S. G. R. Mount for
$64.00.
August 5th, 1856.
D. F. Ramsour.

"S. G. R. Mount enters and locates six hundred and forty acres of land, beginning on a pine on the waters of Slick Rock Creek, in Cherokee County, North Carolina, and running various courses for complement.

September 1, 1853.

S. G. R. MOUNT.

W. issued September 19, 1853."

Robert F. Cook.
No. 440.
Entered
Mar. 22, 1853.
640 acres.

195

"Robert F. Cook enters, as general enterer, 640 acres of land in Cherokee County, North Carolina, beginning at a stake on the east side of Slick Rock Creek and the line between Tennessee and North Carolina, where the old Indian Trail leading from Tellassee Old Town, in the State of Tennessee to Cheoheh, in North Carolina, crosses said creek, thence east three hundred and twenty poles to a stake, thence north three hundred and twenty poles to a stake, thence west three hundred and twenty poles to a stake, thence south three hundred and twenty poles to the beginning.

Entered at 50 cents per acre.

Mar. 22, 1853.

ROBERT F. COOK.

Warrant issued May 4, 1853."

R. F. Cook.
No. 441.
Entered
Mar. 22, 1853.
640 acres.

"Robert F. Cooper, enters, as general enterer, 640 acres of land in Cherokee County, North Carolina, beginning at a stake on the east side of Slick Rock Creek on the line between Tennessee and North Carolina, where the old Indian Trail leading from Tellassee old town in the State of Tennessee to Cheowah, North Carolina, crosses said creek; thence up the meanders of the creek with the said state line, 340 poles to a stake; thence east, 320 poles to a stake, thence in a north direction in a parallel line with the state line, 340 poles, to a stake; thence west 320 poles to the beginning. Entered at 50 cents per acre.

Mar. 22, 1853.

ROBERT F. COOK.

Wt. issued May 4, 1853."

J. J. Turnbill.
No. 611.

"John J. Turnbill & Co. enters three hundred acres of land in Cherokee County, North Carolina, beginning at a stake on the south

Entered
300 acres.
May 4, 1853.

bank of the Tennessee River on the state line at the mouth of Slick Rock Creek, running up said creek with the said state line and various courses for complement.

May 4, 1853.

JOHN J. TURNBILL & CO.

Warrant issued May 17, 1853."

The plaintiff then offered the field notes of the survey of the last named entry, No. 611, by J. W. C. Piercey, County Surveyor of Cherokee County, North Carolina, in the following words:

"Begins on a stake and three chestnuts, on the bank of Tennessee River, on the state line, near the mouth of Slick Rock Creek, and runs south, 25 degrees, with said line, 220 p., to a stake on said line; then N. 65 E., 220 p. to a stake; then N. 25 w. 220 p. to a stake; then S. 25 W., 220 p. to the Beginning.

May 24, 1853.

196 C. HUDSON.

S. E. Henderson."

(The foregoing description purports to be a copy from the field notes of J. W. C. Piercey, County Surveyor of Cherokee County. The plaintiff will offer the original, if it can be found.)

"STATE OF NORTH CAROLINA.
Cherokee County:

A. N. Colvard.
No. 5054.
Enters
640 acres.
March 29, 1856.

"Andrew N. Colvard enters and locates 640 acres of land in said county in Dist. No. 10. Begins on the state line, southwest of Stack Rock, at a stake and pointers, and running with the said line and various courses to the beginning for complement.

A. N. COLVARD.

Issued.

"STATE OF NORTH CAROLINA.
Cherokee County:

S. Henry.
No. 7296.
640 acres.
Oct. 31, 1867.

Samuel Henry enters and locates 640 acres of land lying on the Rock Stack Mountain where the state line crosses it, and running various courses for complement, including the head waters of Slick Rock Creek, said creek being the head waters of Tennessee River. Entered according to Acts of General Assembly, Murphy, North Carolina, Oct. 31, 1867.

Wt. issued Oct. 31, 1867."

"STATE OF NORTH CAROLINA,
Cherokee County:

S. Henry.
No. 7297.
640 acres.
Oct. 31, 1867.

Samuel Henry enters and locates 640 acres of land on the waters of Slick Rock Creek, Begins on the northeast corner of William H. Meroney's old entry, No. 435, running south with said line to a pine; thence east to a stake: thence west to the Beginning.

Oct. 31, 1867.

SAMUEL HENRY.

Wt. issued Oct. 31, 1867."

197

S. Henry.
No. 7298.
640 acres.
Oct. 31, 1867.

"Samuel Henry enters and locates 640 acres of land in Cherokee County, North Carolina, on the waters of Slick Rock Creek, Begins on N. E. corner of W. H. Meroney's old entry No. 435, and runs north to a stake; thence east to a stake; thence south to a chestnut, thence west to the beginning corner.

Oct. 31, 1867.

SAMUEL HENRY."

S. Henry.
No. 7299.
640 acres.
Oct. 31, 1867.

"Samuel Henry enters and locates 640 acres of land in Cherokee County, North Carolina, on the waters of Slick Rock Creek, beginning at a spruce pine on head of said creek ¼ mile above what is called Panther Den, and runs east to a stake, thence north to a stake, thence west to a chestnut, thence south to the Beginning corner.

Oct. 31, 1867.

SAMUEL HENRY.

Wt. issued Oct. 31, 1867."

David Derbis.
No. 7501.
640 acres.
June 16, 1871.

"David Hennessa citizen of Cherokee County, N. Carolina, enters and locates 640 acres of land in N. Carolina on the waters of Slick Rock Creek, beginning on J. H. Bryson's old entry No. 405 on the southwest corner and runs an east course with W. H. Meroney's line of 435, crossing Slick Rock Creek to Meig's northeast corner said No., thence *thence* a *a* north course to an old entry said to be made by G. F. Morris, then west crossing Slick Rock Creek to the state line then with said line to the beginning corner so as to include 640 acres.

Entered 16 day of June, 1871.

DAVID HENNESSA."

198

David Hennessa.
No. 7502.
640 acres.
June 16, 1871.

"David Hennessa a citizen of Cherokee County enters and locates 640 acres of land in Cherokee County, N. Carolina, on the waters of Slick Rock Creek, beginning on the northwest corner of W. H. Meroney's old entry No. 435, then up the said line to R. B. Balan's and Harrison's corner, thence a north course crossing Slick Rock Creek; thence a west course to James H. Bryson's corner of No. 405, an old entry; thence a south course crossing Slick Rock Creek to the Beginning.

Entered 16 day of June, 1871.

DAVID HENNESSA."

199

No. 3512.

STATE OF NORTH CAROLINA:

Know Ye that we for and in consideration of the sum of Forty-one Dollars and three cents paid into our Treasury by M. Fain Assignee of Nancy Gentry Adminis. of W. S. Gentry have given and granted and by these presents do give and grant unto M. Fain Assignee of Nancy Gentry Admis. of Wm. Gentry a tract of land containing six hundred and forty acres lying and being in the County of Cherokee Section No. 6595 District No. 5, it being part of the land lately acquired by Treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this State. Bounded as follows viz: Beginning at a chestnut tree near the Top of the Hangover Mountain and runs N. 55 E. seventy poles to a chestnut, corner of No. 4024; then with that line N. 40 E. 250 poles to a beach on said line; then N. 40 W. 320 poles to a post; then S. 40 W. 340 poles to a post; then S. 40 E. passing a former corner, 300 poles to the beginning. Entered May 10th 1859, as by the plat hereunto annexed doth appear, together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining. To hold to the said land M. Fain Assignee of Nancy Gentry, his heirs and assigns forever; yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct: Provided always that the said grantee shall cause this grant to be registered in the Register's Office of our said county of Cherokee within twelve months from the date hereof, otherwise the same shall be void.

In testimony whereof we have caused these our letters to be made patent and our great seal to be hereunto affixed. Witness Tod R. Coldwell, Esq. our Governor and Commander in Chief at Raleigh, the 4th day of December in the Ninety Six the year of our Independence and the year of our Lord one thousand eight hundred and seventy-two.

TOD R. COLDWELL, *Governor.*

By Command:

H. J. MEMINGER,

Secretary of State.

The foregoing grant was registered in the Register's Office
200 of Cherokee County N. Carolina in Book (M) Page 530 this Ninth day of March 1872.

I. H. HENNESSA, *Register.*

Section No. — inserted June 23rd, 1885.

W. M. WEST,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 2 pages contains a true and correct copy of Grant No. 3512 from the State of North Carolina to M. Fain Assignee together with the certificate of registration as appear of record in Deed Book M at pages 530 in the office of the Register of Deeds of Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina.

This July 5th, 1910.

(Signed) A. L. JOHNSON,
By W. M. WEST, *Deputy.*

No. 9084.

STATE OF NORTH CAROLINA:

Know ye that we for and in consideration of the sum of Eleven Dollars (11) by John Dockery Assignee have given and granted and by these presents do give and grant unto the *siad* John Dockery Assignee a tract of land containing fifty (50) acres lying and being in the County of Cherokee District No. 5 it being part of the land acquired by Treaty from the Cherokee Indians, bounded as follows, viz: On Tellico River beginning on a chestnut tree and runs N. 80 W. 126 poles to a spruce pine ; then N. 20 W. 63 poles to a stake; then S. 80 E. 126 poles to a stake; then S. 20 E. 63 poles to the beginning as by the plat herunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appertenances to the said land belonging or appertaining. To hold to the said John Dockery Assignee, heirs and assigns forever. Yielding and paying to us such sums of money yearly or otherwise as our General As-
201 sembly from time to time may direct and promising obedience to all acts of the General Assembly now existing as hereafter to be enacted concerning the passage of fish in the waters of said premises. Entered June 8th, 1853. In witness whereof we have caused these letters to be made patent and our great seal to be hereunto affixed. Witness Daniel G. Fowle, Esq., our Governor and Commander in Chief at Raleigh the 31st day of January in the one hundred and thirteenth year of our Independence and in the year of our Lord one thousand eight hundred and eighty-nine.

By Command:

W. L. SAUNDERS,
Secretary of State.

Registered in the office of the Register of Deeds for Cherokee County, N. C. in Book X, Page 440. This June 17th, 1889.

T. C. McDONALD,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of Grant No. 9084 from the State of North Carolina to John Dockery together with the certificate of registration as appear of record in Deed Book X at page 440 in the office of the Register of Deeds of Cherokee County, N. C.

Witness my hand and official seal at my office in Murphy North Carolina, this July 5th, 1910.

(Signed) A. L. JOHNSON,
Register of Deeds,
By W. M. WEST, *Deputy.*

No. 3748.

STATE OF NORTH CAROLINA:

Know ye that we for and in consideration of the sum of ten (10) dollars and three (3) cents paid into the Treasury by M. Fain have given and granted and by these presents do give and grant
202 unto M. Fain a tract of land containing 50 acres lying and being in the County of Cherokee warrant No. 1352, in District No. 5, it being part of the land lately acquired by Treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this State, bounded as follows, viz. On the waters of Tellico River, Beginning on a hickory tree standing on the line of No. 1310, near the trail leading from Isral Roberts, Tiptons, and runs with the line of a former No. S. 140 poles to the N. W. corner of said No.; thence with that line S. 20 E. 160 poles, passing the beginning corner of said number to a stake; thence N. 33 W. 120 poles to a locust, the S. W. corner of No. 622; thence with the line of No. 1310 S. 20 W. 90 poles to the beginning, as by the plat hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining to hold to the said M. Fain his heirs or assigns forever yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct provided always that the said Grantee shall cause this grant to be registered in the Register's office of our said county of Cherokee within twelve months from the date hereof, otherwise the same shall be void. Entered June 1st, 1853. In Testimony whereof we have caused these our letters to be made patent and our great seal to be hereunto affixed. Witness Curtis H. Brodgen, Esq. our Governor and Commander in Chief at Raleigh the 26th day of November in the One

hundre-th year of our Indepencence and in the year of our Lord One thousand eight hundred and seventy-five.

C. H. BROGDEN, *Governor.*

By Command:
WM. H. HOWERTON,
Secretary of State.

The foregoing Grant came to hand December 9th. 1880 and was registered in Book R, page 126.

R. A. ALLEN,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 1 one page contains
203 a true and correct copy of Grant No. 3748 from the State of North Carolina to M. Fain together with the certificate of registration as appear of record in Deed Book R at page 126 in the office of the Register of Deeds for Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina.

This 5th July 1910.

A. L. JOHNSON,
By W. M. WEST, *Debuty,*
Register of Deeds,

Office of Register of Deeds, Cherokee County, North Carolina.

STATE OF NORTH CAROLINA:

Know Ye that we for and in consideration of the sum of Thirteen (13) — ten (10) cents paid into the Treasury by M. Fain have given and granted and by these presents do give and grant unto M. Fain a tract of land containing One hundred (100) acres lying and being in the County of Cherokee No. 1349 in District No. 5, it being part of the land lately acquired by Treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this State. Bounded as follows, Viz: On the waters of Tellico River beginning on a locust standing near the top of ridge and runs N. 55 W. 100 poles to a double poplar: thence S. 35 W. 160 poles to two chestnuts: thence S. 55 E. 100 poles to a stake: thence N. 35 E. 160 poles to the beginning as by the plat heremto annexed doth appear with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining. To hold to the said M. Fain, his heirs and assigns forever, yielding and paying to us such sums of money yearly or otherwise as our General
204 Assembly from time to time may direct. Provided always that the said Grantee shall cause this grant to be registered in the Register's Office of our said county of Cherokee within twelve months from the date hereof, otherwise the same shall be void. En-

tered June 1st, 1853. In Testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Curtis H. Brogden, Esq. our Governor and Commander in Chief at Raleigh the 26th day of November in the One nundre-th year of our Independence and in the year of our Lord One thousand Eight Hundred and seventy-five.

C. H. BROGDEN, *Governor.*

By Command:
WM. H. HOWERTON,
Secretary of State.

The foregoing grant came to hand December the 9th. 1880, and was registered in Book R page 112.

R. A. AIKEN,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant 3747 from the State of North Carolina to M. Fain together with the certificate of registration as appear of record in Deed Book R at pages 112 in the office of the Register of Deeds for Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina.

This July 5th, 1910.

A. L. JOHNSON,
By W. M. WEST, *Deputy,*
Register of Deeds.

Office of Register of Deeds, Cherokee County, North Carolina.

205 STATE OF NORTH CAROLINA:

Know Ye that we for and in consideration of the sum of Twelve (12) Dollars and Eighty (80) cents paid into the Treasury by M. Fain have given and granted and by these presents do give and grant unto M. Fain a tract of land containing two hundred (200) acres lying and being in the County of Cherokee, warrant No. 1310 in District No. 5, it being part of the land lately acquired by Treaty from the Cherokee Indians, and sold in obedience to an act of the General Assembly of this State. Bounded as follows, viz: On the waters of Tillico River; beginning on a hickory standing near the trace leading from Iseral Roberts to Tipton's and runs N. 50 West with the line of No. 563 passing the N. W. corner of said No. at 90 poles 200 poles to a White Oak in Gentry's line; then with said line North 65 E. 42 poles to the S. E. corner of Gentry's lot; thence with the said line N. 25 W. 42 poles to 2 chestnuts on said line; then N. 20 E. 200 poles to a locust; then S. 50 E. 152 poles to a black oak the N. E. corner of No. 622; then with that line S. 20 W. 242 poles to the beginning as by the plat hereunto annexed doth

appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belong or appertaining to hold to the said M. Fain his heirs or assigns forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct. Provided always that the Grantee shall cause this grant to be registered in the Register's office of our said county of Cherokee within twelve months from the date hereof, otherwise the same shall be void. Entered June 1st, 1853. In testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Curtis H. Brogden, Esq., our Governor and Commander in Chief at Raleigh, the 26th day of November in the One hundredth year of our Independence and in the year of our Lord One thousand eight hundred and seventy-five.

C. H. BROGDEN, *Governor.*

By Command:
WM. H. HOWERTON,
Sec. of State.

The foregoing grant came to hand December 23rd, 1880,
206 and was duly registered in Book "R." page 137.

R. A. AIKEN,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 2 pages contains a true and correct copy of grant No. 3753 from the State of North Carolina to M. Fain together with the certificate of registration as appear of record in Deed Book R at pages 137 in the office of the Register of Deeds of Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina.

This July 5th 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee County, North Carolina.

No. 3746.

STATE OF NORTH CAROLINA:

Know Ye that we for and in consideration of the sum of Ten (10) Dollars and — cents paid into the Treasury by M. Fain have given and granted and by these presents do give and grant unto M. Fain a tract of land containing One hundred (100) acres lying and being in the County of Cherokee, warrant No. 1353 in District No. — it being part of the land lately acquired by Treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of

this State bounded as follows, viz: On the waters of Tellico River: Beginning on a spruce pine the S. W. corner of No. 1312 and runs S. 60 W. 180 poles to a stake; then N. 90 poles to a stake; then W. 60 E. 180 poles to a stake; then South 90 poles to the beginning as by the plat hereunto annexed doth appear, together with all woods, waters, mines, minerals, hereditaments and appurtenances to
207 the said land belonging or appertaining. To hold to the said M. Fain, his heirs or assigns; yielding and paying to us such sums of money yearly or otherwise as the General Assembly from time to time may direct; Provided always that the said Grantee shall cause this grant to be registered in the office of the Register of Deeds of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void. Entered June 1st, 1853. In testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Custis H. Brogden, Esq., our Governor and Commander in Chief, at Raleigh, the 26th day of Nov. in the One Hundredth year of our Independence and in the year of our Lord One thousand Eight hundred and seventy-five.

C. H. BROGDEN, *Governor.*

By Command:
WM. H. HOWERTON,
Sec. of State.

The foregoing grant came to hand December 9th 1880 and was duly registered in Book R, page 119.

R. A. AIKEN,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 3746 from the State of North Carolina to M. Fain together with the certificate of registration as appear of record in deed Book R at page 119 in the office of the Register of Deeds of Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina.

This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office Register of Deeds, Cherokee County, North Carolina.

208 No. 77.

STATE OF NORTH CAROLINA:

Know Ye that we for and in consideration of the sum of Twenty Dollars and — cents paid into the Treasury by M. Fain have given

and granted and by these presents do give and grant unto M. Fain a tract of land containing One hundred acres lying and being in the County of Cherokee Tract No. 1312 in District No. — it being part of the land lately acquired by Treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this State, bounded as follows, viz. On the waters of Tillico River beginning on a spruce pine standing near the bank of Tillico River and near a large rock and runs N. 70 E. one hundred and forty poles to a stake, corner of No. 1314; thence with that line N. 35 *to* 90 poles; thence N. 90 poles to a stake; thence S. 70 W. one hundred and eighty poles to a stake; thence S. Ninety poles to the beginning as by the plat hereunto annexed doth appear together with all woods, waters, mines, minerals, heroditaments and appurtenances to the said land belonging or appertaining to hold to the said M. Fain his heirs or assigns forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct; provided always that the said Grantee shall cause this Grant to be registered in the Register's office of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void. In testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Curtis H. Brogden, Esq. our Governor and Commander in Chief at Raleigh the 6th day of Feb. in the Ninety-ninth year of our Independence, and in the year of our Lord One thousand eight hundred and seventy-five.

C. H. BROGDEN, *Governor.*

By Command
WM. H. HOWERTON,
Sec. of State.

The foregoing grant came to hand Dec. 9th, 1880 and was registered in Book "R" page 114.

R. A. AIKEN, *Register of D.*

209 NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of Grant No. 77 from the State of North Carolina to M. Fain together with the certificate of registration as appear of record in deed book "R" at page 114 in the office of the Register of Deeds of Cherokee County, N. C.

Witness my hand and official seal at my office in Murphy North Carolina.

This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Register of Deeds' Office, Cherokee County, North Carolina.

No. 70.

STATE OF NORTH CAROLINA:

Know Ye that we for and in consideration of the sum of Twenty dollars and — cents paid into the Treasury by M. Fain have given and granted and by these presents do give and grant unto M. Fain a tract of land containing one hundred acres lying and being in the County of Cherokee, Tract No. 1314, in District No. — it being part of the land lately acquired by Treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this State, bounded as follows, viz: On the waters of Tillico River beginning on a stake in the State line runs S. 35 E. ninety poles to a stake, then N. 35 W. ninety poles to a stake; then N. 45 E. one hundred and eighty poles to a stake, then S. 45 W. One hundred and eighty poles to the beginning, as by the plat hereunto annexed both appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining to hold to the said M. Fain, his heirs or assigns forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct; provided always that the said
210 Grantee shall cause this grant to be registered in the Register's office of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void. In testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Curtis H. Brogden, Esq., our Governor and Commander in Chief at Raleigh the fifth day of Feb. in the ninety-ninth year of our Independence and in the year of our Lord one thousand eight hundred and seventy-five.

C. H. BROGDEN, *Governor.*

By Command:

WM. H. HOWERTON,
Sec. of State.

The foregoing grant came to hand Dec. the 9th, 1880 and was duly registered in Book "R." page 120.

R. A. AIKEN,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 70 from the State of North Carolina to M. Fain together with the cerificate of registration as appear of record in Deed Book "R" at page 120 in the office of the Register of Deeds of Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina.
This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee County, North Carolina.

211 No. 76.

STATE OF NORTH CAROLINA:

Know Ye, that — for and in consideration of the sum of Ten Dollars and — cents paid into the Treasury by M. Fain have given — granted and by these presents do give and grant unto M. Fain a tract of land containing One hundred acres lying and being in the County of Cherokee Tract No. 2580 in District No. — it being part of the lands lately acquired by Treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this State, bounded as follows, Viz: On the waters of Tillico River, beginning on the N. E. corner of tract No. 1314 and the State line and running with said line No. 20 E. twenty-five chains to the Southwest corner of Tract No. 1321; thence with its line S. 55 E. passing its Southeast corner and -ith the line of 1317 passing its Southeast corner at one hundred and fifty poles; thence the same course eighteen poles to a post and pointers; thence S. 62 W. thirty-eight chains to the east corner of tract No. 1314; thence with its line N. 55 W. twenty-two chains and fifty links to the beginning as by the plat hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining. To hold to the said M. Fain his heirs or assigns forever yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct; provided always that the said Grantee shall cause this grant to be registered in the Register's Office of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void. In testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Curtis H. Brogden, Esq. our Governor and Commander in Chief at Raleigh the sixth day of February in the Ninety-ninth year of our Independence, and in the year of our Lord One thousand eight hundred and seventy-five.

C. H. BROGDEN, *Governor.*

NORTH CAROLINA,
Cherokee County:

212 I, A. L. Johnson, Register of Deeds for Cherokee County N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 76 from the State of North Carolina to M. Fain together with the certificate of

registration as appear of record in Deed Book R at page 133 in the office of the Register of Deeds of Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina.

This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee County, North Carolina.

No. 3744.

STATE OF NORTH CAROLINA:

Know Ye that we for and in consideration of the sum of Two Dollars (2) and fifty (50) cents paid into the Treasury by M. Fain have given and granted and by these presents do give and grant unto the said M. Fain a tract of land containing fifty (50) acres lying and being in the County of Cherokee Warrant No. 1321 in District No.— it being part of the land lately acquired by Treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this State, bounded as follows, viz: On the waters of the Tillico River beginning on the S. W. corner of Jacob Loudermilk's No. 1331, 1317 and 569 and runs North 55 W. thirty poles to a stake in the State line and the N. W. corner of No. 1331; thence with the State line S. 30 West 180 poles to a stake in said line; thence South 55 East 60 poles to two water oaks Northwest corner of No. 1317; thence with that line North 55 East 180 poles to the *n*eginning as by the plat hereunto annexed doth appear, together with all woods, waters, mines, minerals, hereditaments and appurtenances to
213 the said *line* belonging or appertaining to hold to the said M. Fain his heirs and assigns forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct; provided always that the said Grantee shall cause this grant to be registered in the Register's Office of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void. Entered June 1st, 1853. In Testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Curtis H. Brogden, Esq. our Governor and Commander in Chief at Raleigh the twenty-sixth day of November in the One hundredth year of our Independence and in the year of our Lord One thousand eight hundred and seventy-five.

C. H. BROGDEN,
Governor.

By command:
WM. H. HOWERTON,
Sec. of State.

The foregoing Grant came to hand December 23rd, 1880, and was duly registered in Book "R." page 134.

R. A. AIKEN,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C., do hereby certify that the foregoing attached 1 page contains a true and correct Copy of grant No. 3744 from the State of North Carolina to M. Fain together with the certificate of registration as appear of record in Deed Book "R" page 134, in the office of the Register of Deeds of Cherokee County, N. C.

Witness my hand and official seal at my office in Murphy, North Carolina. This July 5th, 1910.

A. L. JOHNSON,
By W. M. WEST,
Deputy Register of Deeds.

Office of Register of Deeds, Cherokee County, N. Carolina.

214 No. 72.

STATE OF NORTH CAROLINA:

Know ye that we for and in consideration of the sum of Twenty Dollars and — cents paid into the Treasury by M. Fain have given and granted and by these presents do give and grant unto M. Fain a tract of land containing One hundred acres lying and being in the County of Cherokee Tract No. 1317 in District No. —, it being part of the land lately acquired by Treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this State, bounded as follows, viz: On the waters of Tellico River beginning on Jacob Loudermilk's South West corner of No. 1331 & runs S. 25 W. One hundred and eighty poles to two water oaks; thence 55 East Ninety poles to a stake; thence North 25 E. one hundred and eighty poles to the Southwest corner of No. 569; then with that line North 55 West ninety poles to the beginning as by the plat hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining, to hold to the said M. Fain, his heirs or assigns forever, yielding and paying to us such sums of money or otherwise as our General Assembly from time to time may direct; provided always that the said Grantee shall cause this grant to be registered in the Register's Office of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void. In testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Curtis H. Brogden, Esq., our Governor and Commander in Chief at Raleigh the Fifth day of February in the Ninety-ninth year of our Independence and the year of our Lord one thousand eight hundred and seventy-five.

C. H. BROGDEN,
Governor.

By command:
WM. H. HOWERTON,
Sec. of State.

The foregoing grant came to hand Dec. 23rd, 1880, and was duly registered in Book R, page 136.

R. A. AIKEN,
Reg. of Deeds.

(Marginal Entry June 1st, 1853.)

215 NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C., do hereby certify that the foregoing attached 1 page contains a true and correct copy of Grant No. 72 from the State of North Carolina to M. Fain, together with the certificate of registration as appear of record in Deed Book "R" at page 136 in the office of the Register of Deeds of Cherokee County, North Carolina.

Witness my hand and official seal at my office in Murphy, North Carolina. This July 5th, 1910.

A. L. JOHNSON,
By W. M. WEST,
Deputy Register of Deeds.

Office of Register of Deeds, Cherokee County, North Carolina.

No. 3839.

STATE OF NORTH CAROLINA:

Know Ye, That we for and in consideration of the sum of Eighty (80) Dollars and — cents paid into the Treasury by Mr. Fain have given and granted and by these presents do give and grant unto M. Fain a tract of land containing six hundred and forty acres lying and being in the County of Cherokee, Section No. — in District No. 5, warrant No. 7749, it being part of the lands lately acquired by Treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this State, bounded as follows, viz: On Tellico River beginning on a small chestnut and stake corner of No. 1322, where it — on the line of 639 and runs with said line S. 65 W. 30 poles to a stake corner of No. 639; thence N. 25 West 180 poles to a spruce pine, corner of said No. —; thence with said line S. 55 E. 90 poles to a stake corner of said No.
216 —; thence with said line S. 25 W. 180 poles to the corner of the same on the line of No. 2580; thence with its line S. 55 E. 18 poles to its corner; thence S. 25 W. 157 poles to a stake on the line of No. 6595; thence with its line N. 40 East 160 poles to its corner; thence N. 25 W. 20 poles to a stake on the line of No. 6909; thence with its line S. 60 West 100 poles to a black gum said corner; thence with its line N. 30 W. 220 poles to a hickory said corner; thence N. 65 East 200 poles to the corner of No. 1322; thence with its line N. 25 W. 110 poles to the beginning as by the plat hereunto annexed doth appear with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining to Hold to the said M. Fain, his heirs or

assigns forever; Yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct, and promising obedience to all acts of the General Assembly now existing or hereinafter to be enacted concerning the passage of fish in the waters of said premises; provided always that the said Grantee shall cause this grant to be registered in the Register's Office of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void. Entered the 7th of September, 1880. In testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Thomas J. Jarvis, Esq., our Governor and Commander in Chief at Raleigh the 3rd day of March in the one hundred*th* and fifth year of our Independence and in the year of our Lord One thousand Eight Hundred and eighty-one.

THOMAS J. JARVIS,
Governor.

By command:
W. L. SAUNDERS,
Sec. of State.

The foregoing grant came to hand May the 4th, 1881, and was duly registered in the Register's office of Cherokee County in Book R, page 195, on the 6th day of May, 1881.

R. A. AIKEN,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County,
217 N. C., do hereby certify that the foregoing attached 2 pages contain a true and correct copy of Grant No. 3839 from the State of North Carolina to M. Fain, together with the certificate of registration as appear of record in Deed Book R at page 195 in the office of the Register of Deeds of Cherokee County, N. C.

Witness my hand and official seal at my office in Murphy, North Carolina.

This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds,
By W. M. WEST, *Deputy.*

Office of Register of Deed-, Cherokee County, State of North Carolina.

No. 2552.

STATE OF NORTH CAROLINA:

Know ye, That for and in consideration of the sum of 17 dollars paid into our Treasury by M. Fain and Swepson have given and granted and by these presents do give and grant unto Fain and

Swepson a tract of land containing six hundred and forty acres lying and being in the County of Cherokee, bounded as follows: Viz: On the waters of Yellow River beginning on a chestnut corner of No. 1315 and runs with said line No. 10 E. 28 Po. to a corner of 6594 a chestnut; then with that line N. 3 W. 98 poles to a chestnut on the line of 1322; then with that line S. 63 W. 360 poles to a chestnut on the Southwest side of a mountain; then S. 30 East 220 poles to a black gum; then N. 56 E. 160 poles to a chestnut corner of No. 2091; then with that line N. 60 E. 140 poles to the beginning. Entered the 31st of Oct., 1859 as by the plat hereunto annexed doth appear together with all woods, waters, mines, minerals, heraditaments and appurtenances to the said land belonging or appertaining to hold to the said Fain and Swepson *his* heirs & assigns
218 forever yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct; provided always that the said Grantee shall cause this grant to be registered in the Register's office of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void. In testimony whereof we have caused these, our letters to be made patent and our Great Seal to be hereunto affixed. Witness Z. B. Vance, Esq., our Governor Captain General and Commander in Chief at Raleigh the 28th day of November in the 87th year of our Independence and in the year of our Lord 1862.

Z. B. VANCE,

RUFUS H. PAGE, *Sec't'y of State.*

The foregoing deed was registered in Book J, page 386, June 26th, 1863.

B. S. BRITTAIN, *R. C. C.*

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County North Carolina do hereby certify that the foregoing attached 1 page contains a true and correct copy of Grant No. 2552 from the State of North Carolina to M. Fain & Swepson together with the certificate of registration as appear on record in Deed Book "J" at page 386 in the office of the Register of Deeds of Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina.

This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds,
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee County.

219 No. 2565.

STATE OF NORTH CAROLINA:

Know ye that we for and in consideration of the sum of 40 dollars paid into our Treasury by M. Fain and Y. W. Swepson have given and granted and by these presents do give and grant unto the said Fain & Swepson a tract of land containing 640 acres lying and being in the County of Cherokee bounded as follows, viz: On the waters of Snowbird beginning on a chestnut tree, standing on a hillside near one of the head springs of Snowbird and corner of No. 2090 and runs with the line of No. 1691 N. 80 W. 126 poles to a spruce pine corner of No. 4024 then with that line S. 40 W. 320 poles to a stake and hickory corner of the same; then S. 30 West 365 poles to a hickory and black gum corner of No. 4264; then N. 25 E. 180 poles to a chestnut; then N. 41 East 145 poles to a post; then N. 10 W. 270 poles to the beginning. Entered the 25th of May 1859, as by the plat hereunto annexed doth appear together with all woods, mines, minerals, waters, heraditaments and appurtenances to the said land belonging or appertaining to hold to the said Fain and Swepson *his* heirs or assigns forever, yielding & paying to us such sums of money yearly or otherwise as our General Assembly may from time to time direct, provided always that the said Grantee shall cause this grant to be registered in the Register's office of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void. In testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Z. B. Vance, Esq. our Governor Captain General & Commander-in-Chief at Raleigh the 28th day of November in the 87th year of our Independence & in the year of our Lord 1862.

Z. B. VANCE.

RUFUS H. PAGE, *Sec. of State.*

The foregoing deed was registered in Book "J" page 375 June 25th, 1863.

B. S. BRITTAIN, *R. C. C.*

220 NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 2565 from the State of North Carolina to M. Fain and Y. W. Swepson together with our certificates of registration as appear on record in Deed Book J at page 375 in the office of the Register of Deeds of Cherokee County, North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina.

This July 5th 1910.

A. L. JOHNSON,
Register of Deeds,
By W. M. WEST, *Deputy.*

Office of Register of Deeds Cherokee County, N. C.

No. 2571.

STATE OF NORTH CAROLINA:

Know Ye that we for and in consideration of the sum of 19 dollars paid into the Treasury by M. Fain and G. W. Swepson have given and granted and by these presents do give and grant unto the said Fain and Swepson a tract of land containing 300 acres lying and being in the County of Cherokee sect. Dist. No. 9, it being part of the land lately acquired by Treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this State, bounded as follows, viz: On the waters of Snowbird Creek beginning on a chestnut corner of No. 1315 and runs with that line N. 60 E. 185 poles to a stake on the line of No. 1901; then with that line S. 35 W. 140 poles to a corner of the same; then with the line of said No. S. 20 E. 25 poles to a corner of No. 105; then with that line S. 60 W. 100 poles to a corner of the same;
221 then with said — S. 15 E. 60 poles to a white oak corner of No. 6908; then with that line S. 50 W. 98 poles to a corner of said No. — & No. 4024; then N. 30 W. 33 poles to a chestnut; then N. 60 E. 140 poles to a chestnut corner of No. 1315; then with that line S. 30 E. 160 poles to the *n*eginning. Entered 1st of September 1853 as by the plat hereunto annexed doth appear together with all waters, woods, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining to hold to the said Fain and Swepson *his* heirs and assigns forever, yielding & paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct; provided always that the said Grantee- shall cause this grant to be registered in the Register's office of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void. In testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Z. B. Vance, Esq. our Governor, Captain General and Commander-in-Chief at Raleigh the 28th day of Nov. in the 87th year of our Independance & in the year of our Lord 1862.

Z. B. VANCE.

RUFUS H. PAGE,
Sec't'y of State.

The foregoing deed was registered in Book J, page 371 June 25th 1863.

B. S. BRITTAIN, *R. C. C.*

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 2 pages contain a true and correct copy of grant No. 2571 from the State of North Carolina to M. Fain and G. W. Swepson together with the certificate of regis-

tration as appear on record in Deed Book J at page 371 in the office of the Register of Deeds of Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina. This July 5th 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

222 No. 2564.

STATE OF NORTH CAROLINA:

Know Ye, that we for and in consideration of the sum of 12 dollars paid into our Treasury by M. Fain & G. W. Swepson have given and granted and by these presents do give and grant unto M. Fain & Swepson a tract of land containing 100 acres lying and being in the County of Cherokee Sec. Dist. No. 5 it being part of the land lately acquired by Treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this State, bounded as follows, viz: Beginning on a chestnut tree corner of No. 105 and runs with said line N. 15 W. 188 poles to a white oak on said line; then S. 50 W. 98 poles to a cherry tree corner of No. 4024; then with that line S. 2 E. 137 poles to a stake on said line & corner of No. 1691 Williams' lot; then with said line S. 80 E. 126 poles to a corner of the same and corner of No. 2090; then with the line of No. 2090 N. 22 poles to a Spanish oak on the line of 105; then with that line S. 60 W. 53 poles to the beginning. Entered 31st of Oct. 1859 as by the plot hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments, and appurtenances to the said land belonging or appertaining to hold to the said Fain & Swepson *his* heirs and assigns forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct provided always that the said Grantee- shall cause this grant to be registered in the Register's office of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void. In testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Z. B. Vance, Esq. our Governor, Captain General and Commander-in-Chief at Raleigh the 28th day of Nov. in the 87th year of our Independence and in the year of our Lord 1862.

Z. B. VANCE.

RUFUS H. PAGE,
Sec'ty of State.

The foregoing deed was registered in Book J. page 376 June 25th *day* 1863.

B. S. BRITTAIN, *R. C. C.*

223 NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for, Cherokee County, N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 2564 from the State of North Carolina to M. Fain and G. W. Swepson together with the certificate of registration as appear on record in this deed book J at page 376, in the office of the Register of Deeds of Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina.

This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds,
By W. M. WEST, *Deputy.*

Office Register of Deeds, Cherokee County, North Carolina.

No. 16153. Entry No. 8439.

STATE OF NORTH CAROLINA:

Know Ye, that we for and in consideration of the sum of fifteen (15) cents for every acre hereby granted and paid unto the Treasury on the 27th day of January 1904 by Oliver Lovingood and S. W. Lovingood have given and granted and by these presents do give and grant unto the said Oliver Lovingood and S. W. Lovingood a tract of land containing ninety (90) acres lying and being in the County of Cherokee, in District No. 5, on the waters of Tellico River: beginning on a chestnut and chestnut oak on the line of No. 6595 also on the east boundary line of No. 4402 and runs with the line of No. 4402 North fifteen degrees West crossing Tellico River at two hundred poles three hundred poles to a stake on the line of No. 7749; thence with that line S. 47 degrees east two hundred and fifty poles to a stake on the line of No. 6595; thence with that line S. forty degrees west one hundred and fifty poles to the beginning.

224 As by the plat hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining; To hold to the said Oliver Lovingood and S. W. Lovingood, heirs and assigns forever; yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct, and promising obedience to all acts of the General Assembly now existing or hereinafter to be enacted concerning the passage of fish in the waters of said premises. Entered May 26th, 1912. Entry No. 8439. In witness whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Charles B. Aycock, Esq. our Governor and Commander in Chief at Raliegh the 27th day of January in the *in the* One hundred and twenty-eighth year of our Independence and in the year of our Lord One thousand Nine hundred and four.

CHARLES B. AYCOCK, *Governor.*

By Command.
J. BRYAN GRIMES,
Sec't'y of State.

Registered in the office of the Register of Deeds for Cherokee County North Carolina in Book 12 *on page of deeds* 162.
This Feby. 4th, 1904.

THOMAS C. McDONALD,
Register of Deeds.

[C. S. C. SEAL.]

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of Grant No. 16153 from the State of North Carolina to Oliver and S. W. Lovingood together with the certificate of registration as appear of record in Deed Book No. 12 at page 162 in the office of the Register of Deeds of Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina.
This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds,
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee Co., North Carolina.

225 Warrant 7855. No. 9105.

STATE OF NORTH CAROLINA:

Know ye, that we for and in consideration of the sum of — by Isaac Lovingood have given and granted and by these presents do give and grant unto the said Isaac Livingood a tract of land containing two hundred (200) acres lying and being in the County of Cherokee, District No. 5, it being part of the land acquired by Treaty from the Cherokee Indians, bounded as follows, viz: On Tillico River, beginning on a chestnut the beginning corner of Entry No. 7854, standing near a small branch and runs S. 50 E. 134 poles to a small cucumber; thence S. 12 W. 102 poles to a cucumber; thence S. 60 W. 100 poles to a chestnut oak; thence N. 45 W. 210 poles to a stake on the line of entry No. 7854; thence with said line N. 60 E. 175 poles to the beginning, as by the plat hereunto annexed doth appear, together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining; to hold to the said Isaac Lovingood, his heirs and assigns forever; yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct, and promising obedience to all acts of the General Assembly now existing or hereinafter to be enacted concerning the passage of fish in the waters of same premises. Entered the 7th of September 1885. In witness whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Daniel G. Fowle, Esq. our Governor and Commander in Chief at Raleigh the 5th day of Feb. *on* the One hundred and thirteenth year of our Inde-

pendence and in the year of our Lord One thousand eight hundred and eighty-nine.

DANIEL G. FOWLE, *Governor.*

By command:
W. L. SAUNDERS,
Sec. of State.

Registered in the office of the Register of Deeds for Cherokee County, N. C. in Book Y. of Deeds and on pages 398 and 399, this June 26th, 1890.

T. C. McDONALD,
Register of Deeds.

226 NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee Co. N. C. do hereby certify that the foregoing 1 page contains a true and correct copy of grant No. 9105 from the State of North Carolina to Isaac Lovingood together with the certificate of registration as appear of record in Deed Book Y pages 398-99 in the office of the Register of Deeds of Cherokee County, North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina.

This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds,
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee County, North Carolina.

No. 2131.

STATE OF NORTH CAROLINA:

Know ye, That we for and in consideration of the sum of $20.00 paid to the Agent of the State by Joshua Harshaw, have given and granted and by these presents do give and grant unto Joshua Harshaw, a preemption containing One hundred acres of land lying and being in the County of Cherokee, on Certificate No. —, District No. —, it being part of the land lately acquired by treaty from the Cherokee Indians and granted in obedience to an act of the General Assembly of this State, Chapter 25, Sec. 7, bearing date 28th day of January, 1851, on the waters of Tellico River in District No. 5, including his improvement; Beginning on a Spanish oak northwest corner of No. — and runs North seventy west eighty poles to a hickory on conditional line between Tipton and John T. Utter; then
227 with that line south fifteen east one hundred poles to a stake on the line of No. —; then with that line north ten east One hundred and ninety poles to the beginning, as by the plat hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining to hold to the said Joshua Harshaw, his

heirs and assigns forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct; provided always that the said Grantee shall cause this grant to be registered in the Register's Office of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void. In testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Thomas Bragg, Esq. our Governor, Captain General and Commander in Chief at Raleigh the 21st day of February, in the 79th year of our Independence and in the year of our Lord One thousand eight hundred and fifty-five.

THOMAS BRAGG.

By Command:
WM. HILL,
Sec't'y of State.

The foregoing deed was registered in Book G page 613 Dec. 18th, 1855.

B. S. BRITTAIN, *R. C. C.*

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 2131 from the State of North Carolina to Joshua Harshaw together with the certificate of registration as appear of record in Deed Book Y at page 613, in the office of the Register of Deeds of Cherokee County, N. C.

Witness my hand and official seal at my office in Murphy North Carolina.

This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee County, North Carolina.

228 Warrant No. 8017. No. 10799.

STATE OF NORTH CAROLINA:

Know ye, That we for and in consideration of the sum of twelve and one-half (12½) cents for every acre hereby granted and paid into the Treasury on the 19th day of February 1891 by J. F. Abernathy and B. Mayfield Assignees have given and granted and by these presents do give and grant unto the said J. F. Abernathy and B. Mayfield Assignees a tract of land containing seventy-five acres (75) lying and being in the County of Cherokee, District No. 5, it being part of the land acquired by treaty from the Cherokee Indians, bounded as follows, Viz: on the waters of Tellico River, beginning on a chestnut on the line of tract No. 672 and runs with said line S. 50 W. 74 poles to a chestnut oak beginning corner of

said No.; thence E. 178 poles to a stake; thence N. 35 E. 55 poles to a white oak corner of tract No. 2091; thence N. 20 W. 103 poles to a stake and corner of Entry No. 7994 thence S. 50 W. passing a corner of No. 672 at forty two poles, 148 poles to the beginning, as by the plat hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining to hold to the said J. F. Abernathy and B. Mayfield, heirs and assigns forever: yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct, and promising obedience to all acts of the General Assembly now existing or hereinafter to be enacted concerning the passage of fish in the waters of said premises. Entered 20th of March 1889. In Witness whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Daniel G. Fowle, Esq. our Governor Commander in Chief at Raleigh the 21st day of February in the One hundred and fifteenth year of our Independence and in the year of our Lord One thousand eight hundred and ninety-one.

DANIEL G. FOWLE, *Governor.*

By Command:
W. L. SAUNDERS,
Sec. of State.

Registered in the Register's office of deeds for Cherokee
229 County, N. C. in Book "Z" on pages 215 & 216, this April 2nd, 1891.

T. C. McDONALD,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee, County, N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 10799 from the State of North Carolina to J. F. Abernathy and B. Mayfield together with the certificate of registration as appear of record in Deed Book "Z" at page 215 in the office of the Register of Deeds of Cherokee County, N. C.

Witness my hand and official — at my office in Murphy North Carolina, this July 5th, 1910.

A. L. JOHNSON,
By W. M. WEST,
Deputy Register of Deeds.

No. 13124.

STATE OF NORTH CAROLINA:

Know ye, That we for and in consideration of the sum of fifteen (15) cents for every acre hereby granted and paid into the Treasury on the 10th day of December 1896 by A. B. Wells have given and granted and by these presents do give and grant unto the said A. B. Wells a tract of land containing One hundred and fifty acres lying

and being in the County of Cherokee, lying in District No. 5, on the waters of Tillico River. Beginning on a chestnut on the line of No. 672 and corner of No. 7567 and runs with its line N. 40 W. 20, poles to its corner; thence with the line of said No. S. 60 W. 140 poles to a corner of said No.; thence N. 56 W. 105 poles to a corner of 7749; thence with that line N. 60 E. 100 poles to a black gum corner of No. 6909; thence with its line N. 56 E. 130 poles to a chestnut on the line of No. 7994; thence with its line S. 40 E. 115 poles to a spruce pine on the line of No. 672; thence with that line S. 50, W. 80 poles to the beginning, as by the plat hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining to hold to the said A. B. Wells heirs and assigns forever; yielding and paying to us such sums of money yearly
230 or otherwise as our General Assembly from time to time may direct and promising obedience to all acts of the General Assembly now existing or hereafter to be enacted concerning the passage of fish in the waters of said premises. Entered the 25th of February 1895. In witness whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Elias Carr, Esq. our Governor and Commander in Chief at Raleigh the 14th day of December in the One hundred and twenty-first year of our Independence and in the year of our Lord One thousand eight hundred and ninety-six.

ELIAS CARR, *Governor.*

By Com:
C. M. COOK,
Sec. of Stat-.

Registered in the office of the Register of Deeds for Cherokee County North Carolina in Book No. 4 on page 456 this 25th of January 1897.

T. C. McDONALD,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 13124 from the state of North Carolina to A. B. Wells, together with the certificate of registration as appear of record in Deed Book No. 4 at page 456 in the office of the Register of Deeds of Cherokee County, North Carolina.

Witness my hand and official seal at my office in Murphy, North Carolina.

This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds,
By W. M. WEST,
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee Co. North Carolina.

231 Warrant No. 7994. No. 10800.

STATE OF NORTH CAROLINA:

Know ye, That we for and in consideration of the sum of fifteen (15) cents for every acre hereby granted and paid into the Treasury on the 19th of Feb. 1891 by C. C. Hoss & J. A. Abernathy & B. Mayfield Assignees have given and granted and by these presents do give and grant unto the said C. C. Hoss & J. F. Abernathy & B. Mayfield Assignees a tract of land containing one hundred and fifty (150) acres lying and being in the County of Cherokee, District No. 5, it being part of the land acquired by Treaty from the Cherokee Indians, bounded as follows, viz: On the waters of Tellico River, beginning on a spruce pine at a branch and on the line of tract No. 672 and runs with said line N. 50 E. 43 poles to a cucumber on corner of said tract; thence with said line S. 50 E. 42 poles to a stake and corner of entry No. 8017; thence N. 20 W. 179 poles to a cherry at a branch; thence S. 65 W. 180 poles to a stake; thence S. 40 E. 150 poles to the beginning, as by the plat hereunto annexed and doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining to hold to the said C. C. Hoss & J. F. Abernathy & B. Mayfield Assignees, heirs and assigns forever; yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct and promising obedience to all acts of the General Assembly now existing or hereafter to be enacted concerning the passage of fish in the waters of said premises. Entered the 1st of January 1889. In witness whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Daniel G. Fowle, Esq., our Governor and Commander-in-Chief at Raleigh the 21st day of February, in the One hundred and fifteenth year of our Independence and in the year of our Lord One thousand eight hundred and ninety-one.

DANIEL G. FOWLE, *Gov.*

By Command:
W. L. SAUNDERS,
Sec. of State.

Registered in the office of the Register of Deeds for Cherokee County North Carolina in Book "Z" on pages 214 & 215 this April 2nd, 1891.

T. C. McDONALD,
Register of Deeds.

232 NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee Co. N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 10800 from the State of North Carolina to C. C. Hoss & J. F. Abernathy & B. Mayfield together with the certificate of registration as appear of record in Deed Book "Z"

at page 214 in the office of the Register of Deeds of Cherokee County, N. C.

Witness my hand and official seal at my office in Murphy North Carolina.

This July 5th 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee Co. North Carolina.

No. 13123.

STATE OF NORTH CAROLINA:

Know ye, that we for and in consideration of the sum of twelve and one-half (12½) cents for every acre hereby granted and paid into the Treasury on the 10th day of Dec. 1896 by A. B. Wells Assignee have given and granted and by these presents do give and grant unto the said A. B. Wells Assignee a tract of land containing seventy-five (75) acres lying and being in the County of Cherokee, lying in District No. 5 on the waters of Tellico River. Beginning on a hickory a corner of No. 7749 and runs with Fain's line S. 62 W. 152 poles to a chestnut the Southeast corner of No. 1314; thence with its line S. 45 W. 130 poles to the line of tract No. 4402; thence with its line N. 75 E. 180 poles to the line of No. 7749; thence with said line N. 25 E. 130 poles to the beginning, as by the plat hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land
233 belonging or appertaining to hold to the said A. B. Wells Assignee heirs and assigns forever; yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct and promising obedience to all acts of the General Assembly now existing or hereafter to be enacted concerning the passage of fish in the waters of said premises. Entered 27th April 1895. In witness whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Elias Carr, Esq., our Governor and Commander-in-Chief at Raleigh the 14th day of December in the one hundred and twenty-first year of our Independence and in the year of our Lord one thousand eight hundred and ninety-six.

ELIAS CARR, *Governor.*

By Command:
C. M. COOK,
Sec. of State.

Registered in the office of the Register of Deeds for Cherokee County, N. C. in Book 4 on page 457 this Jan. 25th 1897.

T. C. McDONALD,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C., do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 13123 from the state of North Carolina to A. B. Wells together with the certificate of registration as appear of record in Deed Book No. 4, at page 457 in the office of the Register of Deeds for Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina.

This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds,
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee County, North Carolina.

234 Entry #8469. No. 16181.

STATE OF NORTH CAROLINA:

Know ye, That we for and in consideration of the sum of fifteen cents (15) for every acre hereby granted and paid into the Treasury on the 27th day of January 1904 by Oliver Lovingood Assignee of Poley Cook have given and granted, and by these presents do give and grant unto the said Oliver Lovingood Assignee a tract of land containing one hundred and twenty-five (125) acres lying and being in the County of Cherokee, in Dist. No. 5 on the head waters of Beaverdam Creek. Beginning on a black oak corner of No. 2776 on the line of No. 2588 and runs with the line of No. 2588 South 60 degrees West twenty poles to a corner of No. 8307; thence with the line of No. 8307, South 69 degrees East 270 poles to a stake on the line of No. 560; thence with the line of No. 560 North 75 poles to a stake at or near the beginning corner of No. 501; thence with the line of 501 North 22 degrees west 95 poles to a stake on the line of No. 2776; thence with the line of No. 2776 South 73 West 200 poles to the beginning, as by the plat hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining to hold to the said Oliver Lovingood assignee Heirs and assigns forever; yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct, and promising obedience to all acts of the General Assembly now existing or hereafter to be enacted concerning the passage of fish in the waters of said premises. Entered Jan. 31st, 1903. Entry No. 8469. In witness whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Charles B. Aycock, Esq., our Governor and Commander-in-chief at Raleigh the 27th day of January in the One hundred and twenty-

eighth year of our Independence and in the year of our Lord one thousand nine hundred and four.

CHARLES B. AYCOCK, *Gov.*

By Command:
J. BRYAN GRIMES,
Sec. of State.

235 Registered in the office of the Register of Deeds for Cherokee County, North Carolina in Book No. 12 of deeds and on page- 264 & 265 this March 16th, 1904.

THOS. C. McDONALD,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C., do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 16181 from the state of North Carolina to Oliver Lovingood together with the certificate of registration as appear of record in Deed Book No. 12, page 264 in the office of the Register of Deeds of Cherokee County, North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina.

This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Register of Deeds Cherokee Co., North Carolina.

No. 16182. Entry No. 8442.

STATE OF NORTH CAROLINA:

Know ye, That we for and in consideration of the sum of fifteen (15) cents for every acre hereby granted and paid into the Treasury on the 27 day of January 1904 by Oliver Lovingood have given and granted and by these presents do give and grant unto the said Oliver Lovingood a tract of land containing Two hundred and twenty-five (225) acres lying and being in the County of Cherokee, in District No. 5, on the headwaters of Tillico and Hanging Dog Creek. Beginning on a black oak the S. E. corner of No. 4403 and runs with the line of said No. North fifteen degrees West two hundred and sixty poles to a water oak on the line of No. 7855; thence
236 with the line of said No. South forty-five degrees east one hundred and thirty-eight poles to a chestnut oak; thence North sixty degrees east one hundred and sixty poles to a cucumber; thence north twelve degrees east twenty-three poles to a birch on the line of No. 6595; thence with that line South forty degrees east one hundred and twenty poles to a chestnut, the beginning corner of No. 6595 at or near the line of No. 6911; thence with that line South sixty-five degrees West thirty poles to a stake at or near the

corner of said No.; thence south with said line 114 poles to the N. E. corner of No. 8244; thence with that line west sixty poles to the N. W. corner of said No.; thence South one hundred and thirty-two poles to a chestnut, corner of said No. and on the line of No. 2299; thence with that line West passing the N. E. Corner of No. 253 at eighty poles eighty-seven poles to a small white oak on said line; thence north thirty-five degrees west eighty-two poles to the beginning, as by the plat hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining to hold to the said Oliver Lovingood heirs and assigns for-ver; yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct, and promising obedience to all acts of the General Assembly now existing or hereafter to be enacted concerning the passage of fish in the waters of said premises. Entered Aug. 25th, 1902. Entry No. 8442. In witness whereof we have caused these letters to be made patent and our Great Seal to be hereunto affixed. Witness Charles B. Aycock, Esq., our Governor and Commander-in-Chief at Raleigh, the 27th day of January in the one hundred and twenty-eighth year of our Independence and in the year of our Lord one thousand nine hundred and four.

CHAS. B. AYCOCK, *Gov.*

By Command:
J. BRYAN GRIMES,
Sec. of State.

Registered in the office of the Register of Deeds for Cherokee County, N. C., in Book 12 of deeds at page 258. This March 16th, 1904.

THOS. C. McDONALD,
Register of Deeds.

237 NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C., do hereby certify that the foregoing attached 2 pages contain a true and correct copy of grant No. 16182 from the state of North Carolina to Oliver Lovingood together with the certificate of registration as appear of record in deed book No. 12 at page 258 in the office of the Register of Deeds of Cherokee County, North Carolina.

Witness my hand and official seal at my office in Murphy, North Carolina.

This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds,
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee County, North Carolina.

No. 1312. (1392.)

STATE OF NORTH CAROLINA:

Know ye, That we for and in consideration of the sum of Twenty dollars and — cents paid to the Agent of the State by Joshua Harshaw have given and granted and by these presents do give and grant unto Joshua Harshaw Assignee, R. K. Bean pre-emption containing One hundred acres of land lying and being in the County of Cherokee on certificate No. 581, in Dist. No. 5, it being part of the land lately acquired by treaty from the Cherokee Indians and granted in obedience to an act of the General Assembly of this state, Chapter 25, Sec. 7, bearing date 24th day of January, 1851, on the waters of Tellico River including his improvement, beginning on a large black gum and runs N. 80 degrees W. crossing the south fork of Tellico at thirty-one poles to a broken black oak, then N. ten degrees W. One hundred and twenty-seven poles to a stake, then S. ten degrees east One hundred and twenty-seven poles to the beginning, as by the plat hereunto annexed doth appear together with all
woods, waters, mines, minerals, hereditaments and appur-
238 tenances, to the said land belonging or appertaining, to hold to the said Joshua Harshaw his heirs and assigns forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct. Provided always that the said Grantee shall cause this grant to be registered in the Register's office, of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void. In testimony whereof we have caused these our letters to be made patent, and our Great Seal to be hereunto affixed. Witness David S. Reid, Esq., our Governor, Captain General and Commander in Chief at Raleigh the 10th of Nov., in the seventy-seventh year of our Independence and in the year of our Lord One thousand eight hundred and fifty-two.

DAVID S. READ, *Governor.*

By Command:
WM. HILL,
Sec. of State.

The foregoing deed came to hand and was registered in the Register's office of Cherokee County, N. C., Book "F," page 94-95, March 19th, 1853.

D. V. BRITTAIN, *R. C. C.*

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee Co. N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 1312, (1392) from the state of North Carolina to Joshua Harshaw, together with our certificate of registration as appear on record in deed book "F" at page 94, in the office of the Register of Deeds for Cherokee County, N. C.

Witness my hand and official seal at my office in Murphy, North Carolina.
This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds,
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee Co., North Carolina.

239 No. 16935.

STATE OF NORTH CAROLINA:

Know ye, that we, for and in consideration of the sum of fifty (50c.) cents for every acre hereby granted and paid into the Treasury on the 16th day of April 1907 by John S. Adams have given and granted and by these presents do give and grant unto the said John S. Adams a tract of land, containing sixty-six acres, lying and being in the County of Cherokee in District No. 5, on the waters of Tellico River. Beginning on two water oaks, on the line of No. 501, also corner of No. 1314 and runs with that line North 20 degrees East 18 poles to a spruce pine, corner of No. 1310, thence with the line of said No. South fifty degrees East crossing Tipton's Creek, at seventy-six poles one hundred and sixteen poles to a chestnut oak and black oak, the Northwest corner of No. 622, also corner of No. 8438, thence with the line end eight degrees west One hundred and twenty-six poles to a holly on the line of No. 1353, thence with that line S. 60 degrees W. crossing Tipton's Creek, at twelve poles, one hundred and thirty-four poles to a stake on the line of No. 2776, thence with that line South twenty degrees W. One hundred and thirteen poles to a sourwood, on a line of No. 501, thence with that line S. 22 E. to the beginning, as by the plot as hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining, to hold to the said John S. Adams, heirs and assigns forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct, and promising obedience to all acts of the General Assembly now existing or hereafter to be enacted concerning the passage of fish in the waters of said premises. Entered the 7th day of July 1906. Entry No. 8514. In witness whereof we have caused these letters to be made patent and our Great Seal to be hereunto affixed. Witness R. B. Glenn, Esq. our Governor and Commander in Chief at Raleigh the 16th day of April the One hundred and thirty-first year of our Independence, and in A. D. 1907.

R. B. GLENN, *Governor.*

240 By Command:
J. BRYAN GRIMES,
Sec. of State.

Recorded in Book 19 on page 401 Sept. 17th, 1907.
S. W. LOVINGOOD,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee Co. N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 16935 from the state of North Carolina to John S. Adams, together with the certificate of registration as appear on record in this deed book 19, at page 401 in the office of the Register of Deeds of Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina. This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee County, North Carolina.

No. 16936.

STATE OF NORTH CAROLINA:

Know ye, That we, for and in consideration of the sum of fifty cents (50) for every acre hereby granted and paid into the Treasury on the 16th day of April 1907 by John S. Adams has given and granted, and by these presents do give and grant unto the said John S. Adams, a tract of land containing forty-six acres lying and being in the County of Cherokee, in District No. 5, on the waters of Tellico River, beginning on a line, the S. E. Corner of No. 4462 and runs No. 62 E., One hundred and fifty poles to a beech corner of No. 7749 and on the line of 6595, thence with that line S. 40 W.
241 One hundred and fifty poles to a beech on the line of No. 7855, thence with that line N. 50 W. sixty poles to a chestnut, the beginning corner of said No. thence with the line of said No. S. 60 W. One hundred and thirty-three poles to a stake on the line of No. 4403; thence with the line N. 15 W. thirty-five poles to a chestnut N. E. corner of said No. and on the line of No. 4402, thence with that line N. 75, E. One hundred and forty-four poles to the beginning, as by the plot hereunto annexed doth appear, together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining, to hold to the said John S. Adams, heirs and assigns forever, yielding and paying to us such sums of money yearly, or otherwise as our General Assembly, from time to time may direct, and promising obedience to all acts of the General Assembly now existing or hereafter to be enacted concerning the passage of fish in the waters of said premises. Entered the 7th day of July 1906. Entry No. 8515. In witness whereof we have entered these letters to be made patent and our great seal to be hereunto affixed. Witness R. B. Glenn, Esq. our Governor and Commander in Chief, at Raleigh the One hundred and thirty-first year of our Independence and in the year of our Lord 1907.

R. B. GLENN, *Governor.*

By Command:
J. BRYAN GRIMES,
Sec. of State.

Reg. Book 19—page 400 Sept. 17th. '07.
S. W. LOVINGOOD,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee Co. N. C. do hereby certify that the foregoing attached 1 pages contains a true and correct Copy of grant No. 16936 from the state of North Carolina to John S. Adams, together with the certificate of registration as appear on record in this deed book 19 at page 400 in the office of the Register of Deeds of Cherokee County, N. C.

242 Witness my hand and official seal at my office in Murphy North Carolina. This July 5th. 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Register of Deeds. Cherokee County. North Carolina.

No. 16937.

STATE OF NORTH CAROLINA:

Know Ye, that we, for and in consideration of the sum of fifty (50c.) cents for every acre hereby granted and paid into the Treasury on the 16th day of April 1907, by John S. Adams, have given and granted and by these presents do give and grant unto the said John S. Adams a tract of land containing twenty-three acres, lying and being in the county of Cherokee, in District No. 5 on the waters of Tellico River, beginning on a small chestnut the N. W. corner of No. 1353, and runs with the line of said No. N. 60 E. one hundred and eighty poles to a chestnut, the N. E. corner of said No., and N. W. corner of No. 1312 on the state line, thence with the state line three hundred and twenty-one poles to the Tellico River and corner of No. 2776, thence up said river with the line of No. 2776, thirty-seven poles to the line of No. 1353; thence with that line N. five poles to the beginning, as by the plot hereunto annexed doth appear, together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining, to hold to the said John S. Adams, heirs and assigns forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct, and promising obedience to all acts of the General Assembly, now existing or hereinafter to be enacted concerning the passage of fish in the waters of said premises. Entered July 7th, 1906. Entry No. 8516.

In witness whereof we have caused these letters to be mad
243 patent and our Great Seal to be hereunto affixed. Witne
R. B. Glenn, Esq. Governor and Commander in Chief at

Raleigh the 16th day of April 131 year of our Independence and in the year of our Lord 1907.

R. B. GLENN, *Governor.*

By Command:
J. BRYAN GRIMES,
Sec. of State.

Reg. in Book No. 19 page 398, Sept. 17th, 1907.
S. W. LOVINGOOD,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for the County of Cherokee, N. C. do hereby certify that the foregoing attached page contains a true and correct copy of grant No. 16937 from the state of North Carolina to John S. Adams, together with the certificate of registration as appear on record in deed book 19 at page 398, in the office of the Register of Deeds of Cherokee County, North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina. This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds,
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee Co., North Carolina.

No. 2931. Entry No. 2776.

STATE OF NORTH CAROLINA:

Know ye, That we, for and in consideration of the sum of forty-eight dollars and fifty-two cents paid into our Treasury by S. W. Gilbert and W. H. Peet have given and granted and by these presents do give and grant unto S. W. Gilbert and W. H. Peet a tract of land containing 450 acres of land lying and being in the County of Cherokee, Sect. in District No. — it being part of the land lately acquired by treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this state, bounded as
244 follows, viz. On the waters of Tellico River, beginning on a chestnut running thence N. 20 E. 270 poles to Tellico River, then down the river 108 poles to the state line; then with the state line S. 57 W. 240 poles to a stake; then S. 220 poles to a stake, then N. 73 E. 300 poles to the beginning. Entered the 25th day of February 1854, as by the plot hereunto annexed doth appear, together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining, to hold to the said S. W. Wilbert and W. H. Peet, their heirs and assigns, forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct, provided always that the said Grantee- shall cause this grant to be registered in the Register's office of our said County of Cherokee within

twelve months from the date hereof, otherwise the same shall be void. In testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness John W. Ellis, Esq. our Governor, Captain, General Commander in Chief at Raleigh the third day of Nov. the 85th year of — our Lord 1860.

JOHN W. ELLIS, *Governor.*

By Command:
RUFUS H. PAGE,
Sec. of State.

The within deed was registered in Book "J" page 63, January 14th 1862.

B. S. BRITTAIN, *R. C. C.*
P. B. BRITTAIN,
Dept. R. C. C.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 1 page

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for the County of Cherokee, N. C. do hereby certify that the foregoing 1 page contains a true and correct copy of grant No. 2931 from the state of North Carolina to S. W. Gilbert and W. H. Peet together with the certificate of registration as appear of record in deed book 63 in the office of the
245 Register of Deeds of Cherokee County, N. C.

Witness my hand and official seal at my office in Murphy, North Carolina. This 5th of July 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee County, North Carolina.

No. 16179. Entry No. 843.

STATE OF NORTH CAROLINA:

Know ye, that we, for and in consideration of the sum of fifteen cents (15¢) for every acre hereby granted and paid into the Treasury on the 27th day of January 1904 by Oliver Livingood, have given and granted and by these presents do give and grant unto the said Oliver Livingood a tract of land containing two hundred and fifty (250) acres, lying and being in the County of Cherokee, in District No. 5, on the waters of Tillico River. Beginning on a poplar the N. W. corner of No. 4403, and the S. W. corner of No. 4402 and runs with the line of No. 4402, North fifteen degrees West, crossing Tellico River at one hundred and twenty-seven poles, two hundred and four poles to a holly on the line of No. 1312; thence with that

line South seventy degrees west One hundred and six poles to a spruce pine, fallen at a large rock, corner of said No. also the beginning corner of No. 1553. Thence with that line South sixty degrees West crossing Tellico at thirty six poles forty-four poles to a large holly on the south bank of Tellico River; thence South eight degrees east One hundred and twenty-six poles to a chestnut oak the Northwest corner of No. 6221 also a corner of No. 6959; thence with its line North fifty-five degrees East sixty poles to a poplar, a corner of No. 6959; thence with that line South sixty-five East one hundred and five poles to a chestnut on a steep hillside; thence South thirty-five degrees West eighty-four poles to a double poplar, the N. W. corner of No. 1349; thence with the line of said No. South fifty-five degrees East One hundred poles to a locust fallen, stone set up
246 on top of the ridge, it being the beginning corner of No. 1349. Thence with the line of said No. South thirty-five degrees West One hundred and twenty-one poles to a maple at a branch on the line of No. 583; thence with the line No. 583, South eighty-four degrees East One hundred and twenty-eight poles to a chestnut oak and on the line of No. 4403; thence with the said line North fifteen degrees West two hundred and forty poles to the beginning, as by the plat hereunto annexed doth appear, together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining. To hold to the said Oliver Livingood heirs and assigns forever, yielding and paying to us such sums of money yearly or otherwise, as our General Assembly from time to time may direct, and promising obedience to all acts of the General Assembly now existing and hereafter to be enacted, concerning the passage of fish in the water of said premises. Entered May 26th, 1902. Entry No. 8438. In witness whereof we have caused these our letters to be made patent and our great seal to be hereunto affixed. Witness Charles B. Aycock, Esq. our Governor and Commander-in-Chief at Raleigh the 27th day of January, in the One hundred and twenty-eighth year of our Independence and in the year of our Lord One thousand Nine hundred and four.

CHARLES B. AYCOCK, *Governor.*

By Command:
J. B. GRIMES,
Sec. of State.
[N. C. SEAL.]

Registered in the office of the Register of Deeds for Cherokee County in the book No. "12" of Deeds at page 262 March 16th, 1904.

T. C. McDONALD,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 2 pages contain a true and correct copy of grant No. 16179 from the state of North Carolina

to Oliver Lovingood toge*h*ter with the certificate of registra-
247 tion as appear of record in deed book 12 at page 262 in the office of the Register of Deeds of Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy N. C. This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds,
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee Co., North Carolina.

No. 3752.

STATE OF NORTH CAROLINA:

Know ye, That we, for and in consideration of the sum of five dollars and fourteen cents paid into the Treasury by M. Fain Assignee, have given and granted and by these presents do give and grant unto M. Fain Assignee, a tract of land, containing fifty acres, lying and being in the County of Cherokee warrant No. 1331 in Dist. No. — it being part of the land lately acquired by treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this state, bounded as follows, viz: Between Tillico River and Snowbird, beginning on a chestnut tree the S. W. corner of No. 1351 thence with that line N. 25 W. 58 poles to the N. W. corner *of* said No. a stake on the state line, thence with said line South sixty west 180 poles to a stake on said line, thence S. 35 E. 32 poles to the beginning as by the plot hereunto annexed doth appear together with all woods, waters, mines, minerals, here*d*itam*n*e*t*s and appurtenances to the said land belonging or appertaining, to hold to the said M. Fain Assignee, his heirs or assigns forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct, provided always that the said Grantee shall cause this grant to be registered in the Register's office of our said County of Cherokee within twelve months of the date hereof, otherwise the same shall be void. Entered June 1st 1853. In testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness
Curtis H. Brogden, our Governor and Commander-in-Chief
248 at Raleigh the 26th day of November in the One hundredth year of our Independence and in the year of our Lord One thousand Eight hundred and seventy-five.

C. H. BROGDEN, *Governor.*

By Command:
WM. H. HOWERTON,
Sec'ty of State.

The foregoing grant came to hand December the 23rd, 1880 and was registered in book "R" page 140.

R. A. AIKEN,
Register of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for the County of Cherokee, N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 3752 from the state of North Carolina to M. Fain, Assignee together with the certificate of registration as appear of record in deed book "R" at page 140 in the office of the Register of Deeds of Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina. This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee County, N. C.

No. 2941. Entry No. 4090.

NORTH CAROLINA:

Know ye, that we, for and in consideration of the sum of forty-four dollars and twenty-four cents paid into our Treasury by S. W. Gilbert and W. H. Peet have given and granted and by these presents do gi e and grant unto S. W. Gilbert and W. H. Peet a tract of land containing four hundred acres, lying and being in the county of Cherokee sect. No. — in District No. 5 it being part of the
249 land lately acquired by treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this state, bounded as follows, viz: beginning on the N. W. corner No. 2776 runs S. W. its line 226 poles to its S. W. corner W. 280 poles to a stake, thence North 200 poles to a stake on state line, thence to the place of beginning. Entered the 29th day of December 1854 as by the plot hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining to hold to the said S. W. Gilbert and W. H. Peet their heirs and assigns forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct, provided always that the said Grantee shall cause this grant to be registered in the Register's office of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void. In testimony whereof we have caused these our letters to be made patent and our great seal to be hereunto affixed. Witness John W. Ellis, Esq. our Governor Captain, General and Commander-in-Chief at Raleigh the 3rd day of November in the Eighty-fifth year of our Independence, and in the year of our Lord 1860.

JOHN W. ELLIS.

By Command:
RUFUS H. PAGE.
Sec'ty of State.

The foregoing deed was registered in Book J, page 96. Jan. 14th, 1862.

B. S. BRITTAIN, *R. C. C.*
P. V. BRITTAIN, *D. R. C. C.*

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 2941 from the State of North Carolina to S. W. Gilbert & W. H. Peet together with the certificate of registration as appear on record in deed book J at page 96 in the office of the Register of Deeds of Cherokee County, North Carolina.

250 Witness my hand and official seal at my office in Murphy North Carolina.
This July 5th 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee County, North Carolina.

No. 1722.

STATE OF NORTH CAROLINA:

Know ye, That we, for and in consideration of the sum of Twenty dollars and — cents paid to the Agents of the state by William S. Gentry have given and granted and by these presents do give and grant unto William S. Gentry, a preemption containing one hundred acres of land lying and being in the County of Cherokee, on certificate No. 501, in Dist. No. 5, it being part of the land lately acquired by treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this state, Chapter 25, Sec. 7, bearing date 28th day of January, 1851. On the waters of Tellico River, including his improvement; beginning on a white oak and runs north sixty-eight degrees, east one hundred and twenty poles to a locust; thence North twenty-two degrees west, one hundred and thirty-four poles to a chestnut; then sixty-eight degrees west, one hundred and twenty poles to a chestnut; then south twenty-two degrees east, one hundred and twenty-two poles to the beginning, as by the plot hereunto annexed doth appear, together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining to hold to the said William S. Gentry, his heirs and assigns forever, yielding and paying to us such sums of money, yearly or otherwise, as our General Assembly from time to time may direct, provided always that the said Grantee shall cause this grant to be registered in the Register's Office of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void. In testimony whereof we
251 have caused these our letters to be made patent and our great seal to be hereunto affixed. Witness David S. Reid, Esq. our

Governor, Captain, General and Commander-in-Chief at Raleigh the 10th day of March in the 78th year of our Independence and in the year of our Lord One thousand eight hundred and fifty-four.

DAVID S. REID.

By Command:
WILLIAM HILL.
Sec'ty of State.

The foregoing deed came to hand and was registered in Book "G" page 428 March the 20th 1855.

B. S. BRITTAIN, *R. C. C.*

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 1722 from the state of North Carolina to William S. Gentry together with certificate of registration as appear of record in deed book "G" at page 428 in the office of the Register of Deeds for Cherokee County, North Carolina.

Witness my hand and official seal at my office in Murphy, N. C. This July 5th, 1910.

A. L. JOHNSON.
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Reg. of Deeds, Cherokee County, North Carolina.

Know ye, That we for and in consideration of the sum of twenty dollars and — cents paid into our Treasury by John Anderson Assignee, have given and granted and by these presents do give and grant unto John Anderson, Assignee, a tract of land, containing one hundred acres, lying and being in the County of Cherokee, Sec. No. — in dist. No. 5. It being part of the land lately acquired by treaty from the Cherokee Indians, and sold in obedience to an act of the General Assembly of this state, bounded as follows, viz: On the waters of Tillico River including his improvement, begin-
252 ning on a chestnut tree and runs North thirty-three west, ninety poles to a locust, then north twenty east crossing Tipton's fork of Tillico River at one hundred and twenty-six poles one hundred and eighty poles to a black oak, then South twenty west, One hundred and eighty poles to the beginning as by the plot hereunto annexed doth appear. Together with all woods, waters, mines, minerals, heroditaments and appurtenances to the said land belonging or appertaining to hold to the said John Anderson Assignee forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct, provided always that the said Grantee shall cause this grant to be registered in the Register's office of our said county of Cherokee within twelve months from the date hereof, otherwise the same shall be void. In testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness

Thomas Bragg, Esq. our Governor, Capt. General and Commander-in-Chief at Raleigh, the 11th day of November in the eighty-third year of our Independence, and in the year of our Lord One thousand eight hundred and fifty-eight.

THOMAS BRAGG, *Governor.*

By Command:
RUFUS H. PAGE,
Sec. of State.

The foregoing deed was registered in Book "H" page 636, Dec. 10th, 1858.

B. S. BRITTAIN, *R. C. C.*

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds, for Cherokee Co. N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. — from the state of North Carolina to John Anderson, Assignee, together with the certificate of registration as appear of record in deed book "H" at page 636 in the office of the Register of Deeds for Cherokee County, North Carolina.

Witness my hand and official seal at my office in Murphy, North Carolina. This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee County, North Carolina.

253 No. 9104.

STATE OF NORTH CAROLINA:

Know ye, That we for and in consideration of the sum of —, D. W. Deweese have given and granted and by these presents do give and grant unto the said D. W. Deweese a tract of land containing two hundred and fifty acres, lying and being in the County of Cherokee, Dist. No. 5, it being part of the land acquired by treaty from the Cherokee Indians, bounded as follows, (viz.) on Tellico River. Beginning on a chestnut tree standing near a small branch and runs N. five degrees W. 140 poles to a poplar, thence S. 60 degrees W. 345 poles to a stake, thence S. 50 degrees E. 140 poles to a stake, thence N. 60 E. 145 poles to the beginning, as by the plot hereunto annexed doth appear, together with all woods, waters, mines, minerals, heraditaments and appurtenances to the said land belonging or appertaining, to hold to the said D. W. Deweese heirs and assigns forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct, and promising obedience to all acts of the General Assembly now existing or hereafter to be enacted concerning the passage of fish in the waters of said premises.

Entered the 3rd day of August 1885.

In witness whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed. Witness Daniel G. Fowle, Esq. our Governor and Commander-in-Chief at Raleigh the fifth day of Feb. In the One hundred and thirteenth year of our Independence and in the year of our Lord One thousand eight hundred and eighty-nine.

DANIEL G. FOWLE, *Governor.*

By Command:
W. L. SAUNDERS,
Sec'ty of State.

Registered in the office of the Register of Deeds for Cherokee County, N. C. in Book "X" pages 348 and 349.
This 3rd day of April 1889.

T. C. McDONALD,
Reg. of Deeds.
FELIX AXLEY,
Dept. Reg. of Deeds.

254 NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 9104 from the state of North Carolina to D. W. Deweese together with our certificate of registration as appear on record in Deed Book "X" at page 348 in the office of the Register of Deeds of Cherokee County, N. C.
Witness my hand and official seal at my office in Murphy, North Carolina.
This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee County, North Carolina.

No. 14121. Entry No. 4024.

STATE OF NORTH CAROLINA:

Know ye That we for and in consideration of the sum of forty-seven dollars and fifty-eight cents ($47.58) payment in full for the purchase money paid to the entry taker for Cherokee County, whose receipt for same has been filed in this office by C. C. Gentry assignee, have given and granted and by these presents do give and grant unto the said C. C. Gentry assignee, a tract of land containing six hundred and forty acres (640) lying and being in the county of Cherokee and on the head waters of Tellico River, beginning on a spruce pine it runs S. 40 degrees, West 320 poles to a hickory North twenty degrees West 320 poles to a chestnut on a rock, then N. 40 degrees East 320 poles to a cherry; then S. 20 degrees East 320 poles to the beginning. As by the plot hereunto annexed doth appear,

together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining. To hold to the said C. C. Gentry, assignee, heirs and assigns forever, yielding and paying to us such sums of money, yearly or otherwise, as our General Assembly from time to time may direct, and promising obedience to all acts of the General Assembly now existing, or hereafter to be enacted concerning the passage of fish in the waters of said premises. Entered Aug. the 18th 1854.

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In witness whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed.

Witness Daniel L. Russell, Esq. our Governor and Commander-in-Chief at Raleigh, the 7th day of Feb., year of our Independence — and in the year of our Lord One thousand nine hundred.

DANIEL L. RUSSELL, *Gov-nor.*

By Command:
CYRUS THOMPSON,
Sec'ty of State.

Registered in the office of the Register of Deeds for Cherokee County, N. C. in Book No. 7, page 57. This 20th day of Feb. 1900.

T. C. McDONALD,
Reg. of Deeds.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached 1 page contains a true and in the year of our Lord One thousand nine hundred.
to C. C. Gentry, assignee together with the certificate of registration as appear of record in deed book 7 at page 57 in the office of the register of Deeds for Cherokee County, North Carolina.

Witness my hand and official seal at my office in Murphy, North Carolina.

This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds,
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee County, North Carolina.

256 No. 2208.

STATE OF NORTH CAROLINA:

Know Ye, that we for and in consideration of the sum of three dollars and thirty-nine cents paid in our Treasury by W. S. Gentry, have given and granted and by these presents do give and grant unto W. S. Gentry Sect. No. —, in Dist. No. —. It being part of the land lately acquired by treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this state, bounded as follows (viz.) Beginning on a rock on a line of No. 2299 and runs S. 70 E. 50 poles to a spanish oak, on a high emi-

nence, then N. 80 poles to a spanish oak, then N. 70 West 50 poles to a birch corner of No. 2299 then with that line S. 80 poles to the beginning, Entered the 28th of April 1856 as by the plot hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining to hold to the said W. S. Gentry his heirs and assigns forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may direct, Provided always that the said Grantee shall cause this grant to be registered in the office of the Register of Deeds of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void.

In testimony whereof we have caused these our letters to be made patent and our great seal to be hereunto affixed.

Witness John W. Ellis, Esq., our Governor, Captain, General, Commander-in-Chief at Raleigh 20th day of December, the eighty-fifth year of our Independence, and in the year of our Lord 1860.

JOHN W. ELLIS, *Gove-nor.*

By Command:
RUFUS H. PAGE,
Sec'ty of State.

Registered in Book "I" page 488, Dec. 27th 1861.
B. S. BRITTAIN, *R. C. C.*
P. V. BRITTAIN, *Dep'ty R. C. C.*

257 NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C., do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 2208 from the state of North Carolina to W. S. Gentry together with the certificate of registration as appear of record in deed book "I" at page 488 in the office of the Register of Deeds of Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy, North Carolina. This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Reg. of Deeds, Cherokee County, North Carolina.

No. 2945. Entry No. 4403.

STATE OF NORTH CAROLINA:

Know Ye, that we for and in consideration of the sum of Seventy-one dollars and twenty-eight cents paid into our Treasury by S. W. Gilbert and W. H. Peet have given and granted and by these presents do give and grant unto S. W. Gilbert and W. H. Peet a tract of land containing six hundred and forty acres lying and being in the

county of Cherokee Sect. No. — in Dist. No. 5, It being part of the land lately acquired by treaty from the Cherokee Indians and sold in obedience to an act of the General Assembly of this state, Bounded as follows, (viz.) Near the head waters of the Tellico River beginning on a spanish oak on the top of the mountain and running thence S. 15 W. 100 chains to a poplar, thence N. 75 E. 64 chains to a chestnut, thence S. 45 E. 100 chains to a black oak, thence S. 75 W. 64 chains to the place of beginning. Entered the 26th day of December 1854 as by the plot hereunto annexed doth appear together with all woods, waters, mines, minerals, heraditaments and appurtenances to the said land belonging or appertaining to hold to the said S. W. Gilbert and W. H. Peet their heirs and assigns forever, yielding and paying to us such sums of money yearly or otherwise as our General Assembly from time to time may
258 direct, provided always that the said Grantee shall cause this grant to be registered in the Register's office of our said County of Cherokee within twelve months of the date hereof, otherwise the same shall be void.

In testimony whereof we have caused these our letters to be made patent and our great seal to be hereunto affixed. Witness John W. Ellis, Esq., our Governor, Captain, General and Commander-in-Chief at Raleigh 3rd day of November in the year of our Independence, and in the year of our Lord 1860.

JOHN W. ELLIS.

By Command:
RUFUS H. PAGE,
Sec. of State.

The foregoing deed was registered in Book "J," page 57. Jan. 13th, 1862.

B. S. BRITTAIN, *R. C. C.*
P. B. BRITTAIN, *Dep'ty R. C. C.*

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County N. C. do hereby certify that the foregoing attached 1 page contains a true and correct copy of grant No. 2945 from the state of North Carolina to S. W. Gilbert and W. H. Peet together with the certificate of registration as appear of record in deed book J at page 57 in the office of the Register of Deeds of Cherokee County, North Carolina.

Witness my hand and official seal at my office in Murphy, North Carolina.

This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Reg. of Deeds, Cherokee County, North Carolina.

259 No. 2943. Entry No. 4402.

STATE OF NORTH CAROLINA:

Know Ye, That we, for and in consideration of the sum of seventy one dollars and twenty-four cents paid into our Treasury by S. W. Gilbert and W. H. Peet have given and granted and by these presents do give and grant unto S. W. Gilbert and W. H. Peet a tract of land containing 640 acres lying and being in the County of Cherokee sect. No. — in Dist. No. 5 it being part of the land lately acquired by treaty from the Cherokee Indians, and sold in obedience to an act of the General Assembly of this state. Bounded as follows; (viz.) On the waters of the main Tellico River, beginning on a chestnut and running thence S. 75 W. 64 chains to a poplar, thence N. 15 W. 64 chains to Spanish oak, thence N. 75 E. 100 chains to a spruce pine, thence S. 15 E. 64 chains to a spanish oak, S. 75 W. 36 chains thence to the place of beginning. Entered the 26th day of December 1855, as by the plot hereunto annexed doth appear together with all woods, waters, mines, minerals, hereditaments and appurtenances to the said land belonging or appertaining to hold to the said S. W. Gilbert and W. H. Peet, their heirs and assigns forever, yielding and paying to us such sums of money, yearly or otherwise, as our General Assembly may from time to time direct, Provided always that the said Grantee shall cause this grant to be registered in the Register's Office of our said County of Cherokee within twelve months from the date hereof, otherwise the same shall be void.

In testimony whereof we have caused these our letters to be made patent and our Great Seal to be hereunto affixed.

Witness John W. Ellis, Esq., our Governor, Captain, General Commander-in-Chief at Raleigh the 3rd day of November, in the eighty-fifth year of our Independence, in the year of our Lord 1860.

JOHN W. ELLIS.

By Command:
RUFUS H. PAGE,
Sec. of State.

260 The within deed was registered in Book "J," page 85, Jan. 13th, 1862.

B. S. BRITTAIN, *R. C. C.*
P. V. BRITTAIN,
R. C. C., Deputy.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached one page contains a true and correct copy of grant No. 2943 from the state of North Carolina to S. W. Gilbert and W. H. Peet together with the certificate of registration as appear of record in deed book J at page 85 in the office of the Reg. of Deeds, of Cherokee County, North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina. This July 5th, 1910.

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Register of Deeds, Cherokee County, North Carolina.

M. Fain, W. S. Gentry. No. 6595. Enters 640 Acres May 10/59.

STATE OF NORTH CAROLINA,
Cherokee County:

M. Fain and W. S. Gentry enters and locates six hundred and forty acres of land in said county in the 5th district. Beginning on a chestnut tree near the top of the mountain near the Hangover, it being the divide between Hanging Dog and Tellico and to run East and other various courses so as to include the vacant land on the head of Tellico and Snowbird for complement, May 7th /59.

Entered May 10/59.

M. FAIN.
W. S. GENTRY.

261 J. W. McDaniel. No. 1691. Entered 50 Acres June 8th/1853.

Jonathan McDaniel enters fifty acres of land in Cherokee County, North Carolina in Dist. No. 5. Beginning at a chestnut tree, South of his Lick log, running various courses so as to include said lick log, between Yellow and Snowbird for complement, June 8th 1853.

JONATHAN McDANIEL.

Wt. Issued Aug. the 30th/53.

M. Fain. No. 6909. 500 Acres October 31st, 1859.

STATE OF NORTH CAROLINA,
Cherokee County:

M. Fain enters and locates five hundred acres of land in said County on the waters of Tellico. Beginning on a chestnut tree corner of No. 1315 and to run with said line N. 60 E. 28 poles to a chestnut corner of 6594 with that line N. 30 W. 198 to a chestnut and corner of the same on the line of No. 1322 then with that line S. 65 W. 360 poles to a hickory then S. 30 E. 220 poles to a black gum then to a chestnut corner of 2091, then with that line N. 60 E. 140 poles to the beginning. Oct. 29th. 1859. Issued Oct. 31/58.

M. FAIN.

M. Fain. No. 6644. Enters 640 Acres May 25/59.

STATE OF NORTH CAROLINA,
Cherokee County:

M. Fain enters and locates six hundred and forty acres of land in said county. Beginning on a chestnut tree standing on the side of a

ridge near the waters of Snowbird and to run various courses for complement. May 25th 1851. Issued May 25th 1859.

Jacob Loudermilk. No. 1331. Entered 100 Acres June 1st, 1853.

Jacob Loudermilk enters and locates One hundred acres of land in the County of Cherokee, North Carolina, on the dividing ridge between the waters of Tillico and Snowbird, beginning on a
262 chestnut tree and runs various co-rses for complement.

JACOB LOUDERMILK.

June 1st 1853.
Wt. Issued Aug. 28th 1853.

M. Fain. No. 1352. Entered Two Hundred Acres June the First, 1853.

M. Fain enters and locates two hundred and fifty acres of land in Cherokee County, North Carolina in Dist. No. 5. On the waters of Tellico River, Beginning on a hickory tree on the path leading from Israel Robardses' to S. P. Tipton's cabin on Tillico river, running various co-rses for complement. June the 1st 1853.

M. FAIN.

Issued Aug. 28th/53.

M. Fain. No. 1349. Entered 100 Acres June 1st, 1853.

M. Fain enters and locates One hundred and fifty acres of land in Cherokee County North Carolina on the waters of Tillico river Beginning on a elm tree on the top of the ridge a- N. E. corner from where S. P. Tipton's cabin is, and running various courses for complement. June 1/53.

M. FAIN.

Issued Aug. 28th/53.

M. Fain. No. 1310. Entered 200 Acres June 1st, 1853.

M. Fain enters and locates two hundred acres of land in Cherokee County N. C. in Dist. No. 5. On the waters of Tellico River, Beginning on a hickory tree on the path leading from Israel Roberts' to Tipton's cabin and running various courses for complement. Agreeable to Act of the General Assembly.

M. FAIN.

June 1st 1853.
Wt. Issued Aug. 28th/53.

263 M. Fain. No. 1312. Entered 100 Acres June 1st, 1853.

M. Fain enters and locates One hundred acres of land in Cherokee County on the waters of Tillico river, Beginning on a spruce pine tree, on the bank of Tellico river near the state line of North Caro-

lina and Tennessee, running with the state line and various co-rses for complement.

M. FAIN.

Issued Aug. 28th/53.

M. Fain. No. 1314. Entered 100 Acres June 1st, 1853.

M. Fain enters and locates one hundred acres of land in Cherokee County, North Carolina, on the waters of Tellico river. Beginning on the state line on a stake and running various co-rses for complement. June 1st 1853.

M. FAIN.

Issued Aug. 28th/53.

M. Fain. No. 2580. Entered 100 Acres Dec. 5th, 1853.

M. Fain enters one hundred acres of land on the waters of Tellico, beginning on the N. E. of No. 314 on the state line and to run N. E. direction with the state line to the N. W. corner of No. 1321 and thence with that line and then S. W. direction to the line of No. 1314 and thence with that line to the beginning. Dec. 5th 1853.

M. FAIN.

Wt. Do.

M. Fain. No. 1321. Entered 100 Acres June 1st, 1853.

M. Fain enters and locates one hundred acres on the waters of Tellico river, beginning on the S. W. corner of Jacob Loudermilk's —. Enters and runs various courses for complement June 1, 1853.

M. FAIN.

Wt. issued Aug. the 28/53.

264 M. Fain. No. 1317. Enters 100 Acres June 1st, 1853.

M. Fain enters and locates one hundred acres of land on the waters of Tellico river, beginning on Jacob Loudermilk's S. W. corner and runs various courses for complement in Cherokee County, N. C.

Issued August the 28th/53.

M. FAIN.

M. Fain. No. 7749. 640 Acres Sept. 7th, 1880.

STATE OF NORTH CAROLINA,
Cherokee County:

M. Fain enters and locates six hundred and forty acres of land in Cherokee County in Dist. 5 on the waters of Tellico, beginning on a small chestnut (or stake) corner of 1322 where it corners on 639 then with the line of said No. 639 to 1351 and corner of 1330 then with its line to co*u*er of 1317 then with the line of the said No. 1317 and the lines of 2580 then to the line of 6595 and the

lines 6909 and line 1322 back to the beginning to include all the vacant land in said boundary, this the 7th day of September 1880.

Warrant issued Sept. 16th 1880.

M. FAIN.

M. Fain. No. 2091. Entered 300 Acres Sept. 1st, 1853.

M. Fain *ne*ters and locates three hundred acres of land in the 9th District of Cherokee County on the waters of Snowbird beginning on a chestnut tree near the N. E. line of No. 1901 and to run N. 50 degrees E. and other various courses for complement so as to be surveyed according to the act of the Assembly.

Sept. 1/1853.

Warrant Issued Dec. 21st /53.

Bonds filed by M. Fain for $50.00 July 1st 1856.

M. FAIN.

265 M. Fain. No. 6908. Enters 130 Acres Oct. 31st/59.

STATE OF NORTH CAROLINA:
Cherokee County:

M. Fain enters and locates one hundred and thirty acres of land in said County on the waters of Tellico in Dist. 5, beginning on a chestnut tree, corner of No. 105 and to run with the line of said No. N. 15 W. 188 poles to a white oak on said line then S. 50 W. 98 poles to a cherry corner of 4024 then with that line S. 20 E. 200 poles to a spruce pine a corner of the McDonald lot then with his line 63 poles to his corner then with his line 126 poles to his corner and corner of 2090 32 poles to a Spanish oak on the line of No. 105 then with that line S. 60 W. to the beginning. Oct. 29/59.

Issued Oct. 31/59.

M. FAIN.

No. 7855. Isaac Lovingood. Enters 250 Acres Sept. 7th, 1885.

STATE OF NORTH CAROLINA,
Cherokee County:

SEPT. 7TH, 1885.

Isaac Lovingood enters and locates two hundred and fifty acres of land in the 5th distrist Cherokee County on the waters of Tellico river, beginning on a chestnut tree on or near the line of No. 7854 and runs with its line and various courses for complement. Warrant issued Sept. 7th 1885.

ISAAC LOVINGOOD.

Entry No. 8017.

STATE OF NORTH CAROLINA,
Cherokee County:

The undersigned citizens of said county enters and locates in the 5th district 75 acres of land, of said county on or near the waters

of Tellico river, beginning on a chestnut tree, on the line of 672 running South 50 degrees W. to a chestnut oak the beginning corner No. 672 and various other courses for complement, so as to include the vacant land.

Entered March the 20th 1889.

Warrant issued March 20th 1889.

W. D. HARRISON.

266 A. B. Wells. No. 8200. Entered 200 Acres Feb. 25th, 1895.

MURPHY, N. C., *Feb. 25th*, 1895.

A. B. Wells enters and locates two hundred acres of vacant land in the state of N. C. County of Cherokee in Dist. No. 5 on the waters of Tellico river, beginning on a chestnut tree, corner of A. McD. Harshaw's land and runs in a northerly direction and various courses for complement.

A. B. WELLS.

Stephen Rhea. No. 4403. Enters 640 Acres Dec. 26/54.

STATE OF NORTH CAROLINA,
Cherokee County:

Stephen Rhea enters and locates six hundred and forty acres of land in the 5th Dist. on the waters of Tellico river near the head of said river on the main river and beginning on the top of the mountain that runs from S. P. Lepton's chestnut ridge where said ridge strikes the main mountain, that divides the little fork and the main river and said lines to run due east, so as to make the short way of the survey and them due North, and then South so as to make the survey.

STEPHEN RHEA.

According to law Dec. 26th 1854.

Issued Feb. 8th 1855.

J. W. Blackwell. No. 4024. Enters 400 Acres Aug. the 18th '54.

STATE OF NORTH CAROLINA,
Cherokee County:

James W. Blackwell enters and locates four hundred acres of land in Cherokee County on the waters of Tellico river, beginning on a spruce pine in the fork of said river and to run various co-rses for complement. This the 11th day of Aug. 1854.

Issued August the 18th 1854.

JAMES W. BLACKWELL.

Duplicate issued to C. C. Gentry Jan. 17th 1900.

267 M. C. Wilson. No. 5079. Enters 25 Acres April the 28th, 1856.

STATE OF NORTH CAROLINA,
Cherokee County:

M. C. Wilson enters and locates twenty-five acres of land in said county, beginning on a large rock near the head of a branch and on the line of No. 2299 and runs S. 70 degrees E. fifty poles then North eighty poles then W. 50 poles then S. to the beginning.

Issued April 28th 1856.

M. C. WILSON.

S. Rhea. No. 4402. Enters 640 Acres Dec. the 26th. 1854.

STATE OF NORTH CAROLINA,
Cherokee County:

Stephen Rhea enters and locates six hundred and forty acres of land in the 5th Dist. on the waters of the main Tellico river, beginning on the N. W. of the survey, beginning on the ridge that runs from Tipton's and runs from said corner due North so as to make the short way and then due W. so as to make the long way, and due S. and then due East to the beginning. December 26th 1854.

Issued Feb. 8th 1855.

STEPHEN RHEA.

Stephen Rhea. No. 2776. Entered 640 Acres Feb. 25th. 1854.

STATE OF NORTH CAROLINA,
Cherokee County:

Stephen Rhea enters and locates six hundred and forty acres of land in said County lying on the waters of Tellico river and beginning on the N. E. corner of William Gentry's survey held by the occupant low and then runs with S. P. Tipton's line a N. direction towards Tellico until it strikes the said river and then down the said river to the state line, and then back with the state line towards the Little Ball and so as to make the long way of said tract and then back to the beginning. This the 25th day of Feb. 1854.

STEPHEN RHEA.

Wt. issued June the 20th 1854.

268 S. Rhea. S. W. Davidson. No. 4090. Enters 640 Acres Sept. 1754.

STATE OF NORTH CAROLINA,
Cherokee County:

Stephen Rhea and S. W. Davidson enters six hundred and forty acres of land near the Ball Mts. commencing on the N. W. corner of our survey No. and runs N. 25 degrees E. 320 three hundred and twenty poles to a stake, thence S. twenty-five degrees W. three hun-

dred and twenty poles to a stake, thence W. three hundred and twenty poles to the beginning. Sept. 1 54.

Issued Sept. 21st 1854.

STEPHEN RHEA.
S. W. DAVIDSON.

No. 7853. 100 Acres. Entered July 25th, 1885.

STATE OF NORTH CAROLINA,
Cherokee County:

G. W. Lovingood and James Cornwell enters and locates one hundred acres of land in the County of Cherokee the 5th Dist. On the waters of Hanging Dog and Beaver Dam Creeks Beginning on a white oak standing near the W. line of the Fain donation and being the line of G. W. Lovingood's land and near James Palmer's, and running W. thirty poles to a stake, thence *to* a northern direction to J. M. Johnson's line and thence various courses for complement. Entered July 25th 1885. Warrant issued July 29th 1885.

G. W. LOVINGOOD.
JAMES CORNWELL.

John S. Adams. No. 8515. Enters 50 Acres July 7th, 1906.

STATE OF NORTH CAROLINA,
Cherokee County:

To T. C. McDonald entry taker for Cherokee county, the undersigned of Buncombe and the State of North Carolina enters and lays claim to the following piece or parcel of land in Beaver Dam Township, Cherokee County, and State of North Carolina, in Dist. No. 5, on the waters of Tellico river the same being vacant and un-
269 appropriated land and subject to entry to-wit: Beginning on a lynn, the S. E. corner of No. 4402 and runs thence in an easterly direction to a birch corner of No. 7749 to the line of No. 6595 S. 40 degrees West to the line of No. 7855 thence with that line a N. W. course to the corner of same, thence with another line of said No. a southwest course to the line of 4403 thence N. 15 degrees West to a chestnut, North east corner of said tract in the line of No. 4402, thence with that line to the beginning, containing by estimation fifty acres.

Entered this the 7th day of July A. D. 1906.

JOHN S. ADAMS.

Warrant issued 31st of Aug. 1906.

John S. Adams. No. 8516. Enters 50 Acres July 7th, 1906.

STATE OF NORTH CAROLINA,
Cherokee County:

To T. C. McDonald entry taker of Cherokee County, the undersigned of the County of Buncombe and the state of North Carolina enters and lays claims to the following described piece or parcel of

land in Beaver Dam Town-hip, Cherokee County, State of North Carolina in Dist. No. 5, on the waters of Tellico River the same being vacant and unappropcated land and subject to entry to-wit: Beginning on the N. W. corner of No. 1353 and runs with that line N. 60 degrees E. to the state line; thence with the state line to Tellico river, thence up the river with its meanders to the line of 1353, thence with that line to the beginning. Containing by estimation fifty acres. Entered this the 7th day of July A. D. 1906.

JOHN S. ADAMS.

Wt. issued 31st of Aug. 1906.

270 Oliver Lovingood. No. 8439. Enters 200 Acres May 26th, 1902.

NORTH CAROLINA,
Cherokee County:

Oliver Lovingood enters and locates two hundred acres of land in said County Dist. 5 on the waters of Tellico river, beginning on a chestnut on the east boundary line of No. 4402 and runs with that line N. 15 W. to Fain line, thence with that Fain line to the beginning.

Entered May 26th 1902.

OLIVER LOVINGOOD.

J. S. Adams. No. 8514. Enters 100 Acres July 7th, 1906.

STATE OF NORTH CAROLINA,
Cherokee County:

To Thos. C. McDonald, entry taker for Cherokee County, the undersigned of the County of Buncombe and the State of North Carolina enters and lays claim to the following described piece or parcel of land in Beaver Dam Township, Cherokee County and state of North Carolina in Dist. No. 5 on the waters of Tellico river the same being vacant and unsurveyed land and subject to entry to-wit: Beginning on two water oaks a corner of No. 1310 in the line of N. 501, and runs thence with the line No. 1310 N. 20 degrees E. to a corner of said No, thence with that line S. 50 degrees E. to the N. E. corner of said No. also corner of No. 3438, thence with that line N. 8 degrees W. to a holly corner of said 8438 in the line of No. 1353, thence with that the lines of said No. 1353 S. 60 degrees W. to its corner and thence N. to the line of No. 2776 thence with that line S. 20 degrees W. to the line of No. 501, thence with that line to the beginning, so as to include all the land vacant lying between the line of the tracts called for containing by estimation 100 acres.

Entered this the 7th day of July A. D. 1906.

Wt. issued Aug. 31st 1906.

JOHN S. ADAMS.

271 Poley Cook. No. 8469. Entered One Hundred Acres Jan. 26/1903.

STATE OF NORTH CAROLINA.
Cherokee County:

Poley Cook enters and locates one hundred acres of land in Murphy Township on the waters of Hanging Dog in Dist. 5 beginning on a black gum, and runs south sixty degrees west and various courses for complement so as to include the vacant land. This Jan. 3rd, 1903.

POLEY COOK.

Attest:
ELSIE McDONALD.

Oliver Lovingood. Entry No. 8442. Enters 640 Acres Aug. 25th, 1902.

STATE OF NORTH CAROLINA.
Cherokee County:

Oliver Lovingood enters and locates six hundred and forty acres of land in said County Dist. No. 5 on the head waters of Hanging Dog and Tellico creek, beginning on the southeast corner of tract No. 4403 and runs a southern direction to that line of No. 2299 thence with that line east to a corner on said line, thence north with a former line and other old lines so as to include the vacant land, this August 25 1902.

OLIVER LOVINGOOD.

Entry No. 7994.

STATE OF NORTH CAROLINA.
Cherokee County:

C. C. Hass and A. J. Hass enters and locates one hundred and fifty acres of land in the County of Cherokee on the waters of Tellico river in Dist. 5, beginning on a line of 672 on a spruce pine and runs E. 50 degrees N. and various directions for complement.
This Jan. 1st, 1889.

C. C. HASS &
A. J. HASS.

Warrant issued Jan. 1st 1889.

272 N. Z. Dewease. No. 8205. Entered April 27th, 1895. 75 Acres.

MURPHY, N. C., *April 21st*, 1895.

N. Z. Dewease enters and locates 75 acres in the county of Cherokee and state above, written in Dist. No. 5 on the waters of Tellico river, beginning on a hickory corner of No. 7749 and runs with its line S. 25 degrees West to the line of No. 4402 then with its line S.

75 degrees W. to Fain line, then with said line to the beginning. This April 27th 1895.

N. Z. DEWEESE.

Oliver Lovingood. No. 8439. Enters 200 Acres May 26th, 1902.

NORTH CAROLINA,
Cherokee County:

Oliver Lovingood enters and locates two hundred acres of land in said County Dist. No. 5 and the waters of the Tellico river, beginning on a chestnut on the east boundary line of No. 4402 and runs with that line N. 15 W. to Fain line, thence with that Fain line to the beginning. Entered May 26th 1902.

OLIVER LOVINGOOD.

NORTH CAROLINA,
Cherokee County:

I, A. L. Johnson, Register of Deeds for Cherokee County, N. C. do hereby certify that the foregoing attached fourteen pages contains a true and correct copy of the following entries. Entry No. 7994, made by C. C. Hass and A. J. Hass; entry No. 8205 made by N. Z. Dweese; Entry No. 8439 made by Oliver Lovingood; entry No. 8469 made by Poley Cook; entry No. 8442 made by Oliver Lovingood; entry No. 8443 made by Oliver Lovingood; entry No. 8439 made by Oliver Lovingood; entry No. 8514 made by J. S. Adams; entry No. 8515 made by John S. Adams; entry No. 8516 made by J. S. Adams; entry No. 2776 made by Stephen Rhea; entry No. 4090 made by S. Rhea; and S. W. Davidson, entry No. 7853 made by G. W. Lovingood and James Cornwell; entry No. 4024 made by James W. Blackwell; entry No. 5079 made by M. C. Wilson; entry No. 4402 made by Stephen Rhea; entry No. 4403 made by
273 Stephen Rhea; entry No. 7855 made by Isaac Lovingood; entry No. 8244 made by J. E. Lovingood; entry No. 8017 made by W. D. Hass; entry No. 8200 made by A. B. Wells; entry No. 2091 made by M. Fain; entry No. 6908 made by M. Fain; entry No. 6910 made by M. Fain; entry No. 7749 made by M. Fain; entry No. 1312 Made by M. Fain; entry No. 1314 made by M. Fain; entry No. 2580 made by M. Fain; entry No. 1321 made by M. Fain; entry No. 1231 made by Jacob Loudermilk; entry No. 1352 made by M. Fain; entry No. 1349 made by M. Fain; entry No. 1310 made by M. Fain. Entry No. 6911 made by M. Fain; entry No. 6909 made by M. Fain; entry No. 6644 made by M. Fain; entry No. 6913 made by M. Fain; entry No. 6595 made by M. Fain; and W. S. Gentry. Entry No. 1691 made by Jonathan McDaniel.

As appear of record in the entry books in the office of the Register of Deeds of Cherokee County North Carolina.

Witness my hand and official seal at my office in Murphy North Carolina. This July 5th 1910.

[SEAL.]

A. L. JOHNSON,
Register of Deeds.
By W. M. WEST, *Deputy.*

Office of Register of Deeds of Cherokee County, North Carolina.

274 N. G. PHILLIPS, a witness of lawful age after being first duly sworn, testified on behalf of the complainant as follows:

Questions by F. A. SONDLEY, Esq.:

Q. Where do you live?
A. In Graham County.
Q. What State?
A. North Carolina.
Q. How long have you lived there?
A. I have been living in Robinsville 36 or 37 years, and in the State all of my life.
Q. How long had the county of Graham, in which Robinsville is situate, been established before you removed to that county?
A. I don't remember whether the county commissioners were elected when I went there or not. I went there as soon as the Legislature passed the bill. I think I went there in October after the Legislature passed the bill.
Q. In what year?
A. '72, I think it was.
Q. Where had you lived prior to that time?
A. I had been living at the place where Andrews now stands.
Q. In what County and State?
A. Cherokee County, North Carolina.
Q. How long did you live at that place?
A. I lived there from the time I was fourteen years old, and I have lived in that neighborhood all of my life with the exception of a few years that I lived here in Murphy before the war. I lived here in Murphy five or six years before the war and then I went back to that place during the war and lived there until I moved to Robinsville.
Q. How old are you?
A. I will be 79 the 25th of next November.
Q. Did you ever hold any position of a public nature in Graham County?
A. I don't know about that. I have been Magistrate ever since I have been in the county.
Q. Did you ever hold any other office in that county?
275 A. I was Entry Taker for a number of years.
Q. How long were you entry taker?
A. Five or six years.
Q. Did you ever hold any other office in Graham County?
A. I was United States Commissioner during Cleveland's administration.
Q. Did you ever have anything to do with the listing and collection of taxes in that county?
A. Yes, sir. I have helped list the taxes. I have never held any office as tax collector. I did help McElroy some.
Q. When were you tax lister in that county?
A. I don't know. I was appointed tax lister almost immediately after I went to the county, perhaps the next year, and I listed taxes there every year for a number of years.

Q. Did you know the late Thomas Tatham?

A. Yes, sir. I knew Thomas C. Tatham, he was an uncle of mine.

Q. In what county did he live, if you know?

A. In Cherokee County, this county. He was living in this county when I came to it.

Q. Where is Thomas C. Tatham?

A. He is dead. He has been dead forty years, I reckon.

Q. Did you ever hear Thomas C. Tatham make any declaration in regard to the location of the line between the State of North Carolina and the State of Tennessee in the vicinity of the Tennessee River?

A. Yes, sir. I have heard him talk about it several times.

Q. When was that?

A. Back before the war, about '52 or '53 was the first time I can now bring to mind hearing him talk about it.

Q. Did he have any personal interest in the location of that line?

A. No, sir.

Q. State how he came to make the declarations the first time?

A. As I now recollect it, Capt. Steve Whitaker came there one Sunday afternoon to inquire, or he did enquire, where that state line ran and he asked Uncle Tom about it and he told him.

276 Q. How did Thomas Tatham profess to know anything about it?

A. He said he was with the men who run the line.

Q. At what time?

A. When the line was run between North Carolina and Tennessee.

Q. At the original running?

A. Yes, sir.

Q. On what portion of the line between North Carolina and Tennessee was he present at the running of?

A. I don't know. I suppose he was on it all. I didn't hear him speak specifically about any of the line except the line coming down the Tennessee River, the line between Cherokee County and Tennessee.

Q. What did Tatham say to Whitaker at that time in regard to that line and its location?

Mr. McCroskey: The respondents except to the declaration of the witness Thomas C. Tatham, because the declarations purporting to come from the said Tatham are not such as are competent to prove the location of the said line.

Q. What was it Tatham said to Whitaker on the occasion you mentioned?

A. He told Whitaker that the line run up Slick Rock Creek, and that he need not be uneasy about locating any land on this side of Slick Rock Creek. The Entry Taker's office had just been opened and Whitaker had entered a great deal of land on this side of Slick Rock Creek, on the east side of Slick Rock Creek.

Q. Did he say anything about how far up Slick Rock Creek it ran?

A. He said, I think, about four miles, and crossed one prong of Slick Rock Creek and run up a little ridge between the two prongs.

Q. Did he state on that occasion how they made the survey across the river and how they got across the river?

A. He said that they come down to the river and could not get across the river, and he said that they located a big spruce pine tree at the mouth of Slick Rock Creek and went down, I think, to the ford of Tallassee and there crossed the river and come up on the south side of the river and come up to this place where they
277 had located it and when they got back to the mouth of Slick Rock Creek they run up the creek. I don't remember which side of the creek he said they run upon,—he said they run up the creek.

Q. Did he give you any other details of the survey that he had been present at?

A. Yes, sir, he told me about where they tented. He said that they come up to the top of the mountain that separates Graham County now and they went down that way. He said that they took a direct line to Ducktown,—they didn't know anything about Ducktown at that time. He said, if I recollect right, they found a still house on Cane Creek, but he never did drink. Poor Uncle Tom is dead now and I want to keep his record straight. He said that the crowd got drunk. He said that if they had gone on like they ought to have we would have had Ducktown. I have heard him repeat that often.

Q. Did he say what ridge they went up after they crossed the neck of Slick Rock Creek and turned off there, to what point did that ridge lead? After he crossed the prong of Slick Rock Creek and left Slick Rock Creek and started up the ridge, to what point did that ridge they started up lead?

A. I don't remember. It went up Fodder Stack. He said that the ridge,—after they crossed one prong of Slick Rock,—the ridge between the prongs, and they went up that. He said that they passed Fodder Stack. I don't remember whether it was Big Fodder Stack or Little Fodder Stack.

Q. Were you ever present on any other occasion when Tatham made any declarations about the original running of that line by the commissioners?

A. I don't know about the commissioners. I was present when the County Surveyor, Piercey, came there and asked him about the line and Tatham told him how it run.

Q. Where was it that he claimed it ran?

A. I heard them talk that twice. I think it was at Tatham's house at the dinner table.

Q. Who was Piercey?

278 A. He was the County Survey- of Cherokee County.

Q. Did you know Piercey personally?

A. Yes, sir, I went to school to him.

Q. Was he J. W. C. Piercey?

A. Yes, sir.

Q. When Piercey came to where your Uncle Thomas C. Tatham was what conversation occurred between them?

A. Piercey asked him about the line and he told him what he wanted to know.

Q. What was it?

A. He said that he had some warrants he wanted to survey and he didn't want to run over the line.

Q. What line was that?

A. The State line.

Mr. McCroskey: Respondents interpose the same objection to the declarations of Tatham as has already been set out.

Q. What did Tatham then tell Piercey?

A. About the same as I have told you now. It went up Slick Rock Creek and came to where those ridges forked, and he said that they put up a little station there, and he told Piercey that anything on the east side of Slick Rock Creek belonged to North Carolina. He told him that he need have no fear about surveying that line.

Mr. McCroskey: Respondents interpose the same exceptions.

Q. What was the knowledge, if you know, that Tatham had as to who Piercey was?

A. He lived by Piercey before I came to that country. He knew him better than he did me.

Q. Did he know who Piercey was?

A. Yes, sir. I think the records will show that he was one of Piercey's securities. He knew that Piercey was County Surveyor as well as I did.

279 Q. Did you ever hear anybody else make any declarations in regard to that line about the same time or shortly after Tatham's conversation with Whitaker?

A. I heard old grandfather Whitaker, Steve Whitaker and Jim Whitaker's father. He was a prominent man in that section. He was in the Legislature at one time. I heard him say that the State line between North Carolina and Tennessee run up Slick Rock Creek.

Mr. McCroskey: Respondents except to the declarations of Whitaker as purely hearsay and in no sense competent.

Q. What was Whitaker's name? the old man?

A. James.

Q. Where is he?

A. He is dead. He has been dead forty-five or fifty years.

Q. Did he have any interest in the location of the State line?

A. No, sir, he was a very old man at that time and had no ambition as to money making matters.

Q. Did you ever hear anybody else about the same time say where the line was at that point?

A. I have heard Doc. Patten speak of it about the time the entries of land was commenced in this country.

Q. What time was that?

A. About '53 or '54.

Q. What do you mean by entry taking time?

A. The Legislature passed a law that at a certain time the Entry Taker's office would be opened in the town of Murphy and that any North Carolinian could enter land. I was here when the Entry Taker's office was opened at midnight. Sam Cooper carries his mark yet.

Q. Was there any excitement over the entry of land at that time?

A. Yes, sir. I have been in the war and I have never seen any more excitement than there was at that time.

Q. How generally known was it?

A. It was known all over the county.

Q. Were there any entries of land in the vicinity of Slick Rock Creek at that time?

A. I don't know about that.

280 Q. Where is the Patton that you spoke of?

A. He is dead.

Q. What was his name?

A. John Wesley Patton. He was a son of the old man Patton that lived in Knoxville. He came here and I went to school to him.

Q. What was his profession?

A. He was a school teacher and preacher.

Q. What did he say about it?

A. He said that the line went up Slick Rock Creek.

Mr. McCroskey: The respondents except to the declarations of Patton, because they are hearsay and in no sense competent.

Q. How long has it been since Patton died?

A. He has been dead ten or twelve years, maybe fifteen.

Q. How long has it been since you heard him make those declarations?

A. That was a good while back. I have heard him make them since the war. I don't remember whether I heard him make those declarations before the war or not. I didn't pay any attention to it and didn't charge my memory with it.

Q. Did you know from the time those declarations were made by Thomas C. Tatham, that you speak of, the reputation in the country as to the state line in the vicinity of Tennessee River, where it was?

A. I know what was generally considered to be the state line. We never thought about anything but Slick Rock being the state line.

Q. Was that generally talked?

A. I never heard anything else.

Mr. McCroskey: Respondents except to the declaration of the witness as to what the general reputation of the country was, because the same is incompetent.

Q. How much talk was there about it at the time you speak of?

A. There was a right smart talk about it. I never heard any controversy about it until ten or fifteen years ago.

Q. When Graham County was established where was Slick Rock in relation to Graham County?

A. It was considered the Northwestern boundary part of the county.

281 Q. So, if the land on the east side of Slick Rock Creek was in North Carolina, it was then in Graham County?

A. Yes, sir.

Q. Who ran the lines of Graham County when that county was established?

A. How is that?

Q. Who ran the lines of Graham County when that county was established?

A. I did.

Q. How did you happen to do it?

A. The Legislature of North Carolina appointed me to do it.

Q. You are a surveyor?

A. I have done some surveying. I was never no expert in the business.

Q. Where did you run the line in relation to leaving the Tennessee River at the time you established by your survey the boundaries of Graham County?

A. I run up from the mouth of Slick Rock Creek on the east side.

Q. How high up Slick Rock did you go?

A. I went until Slick Creek give out on the left hand prong and then I took up the ridge.

Q. You only did your surveying, following what Tatham said about Slick Rock Creek?

A. I didn't know anything about anything else. I thought I was right on his survey. I looked, but I didn't see any satisfactory marks on the line. I saw one mark that I thought might be the state line, but I wasn't certain about it and I didn't care. I thought I was running the original survey of the state line and I wanted to get up where I could turn and go back on the line between Cherokee and Graham.

Q. Was there any dispute at that time about the state line running up Slick Rock Creek?

A. No, sir.

Q. What year was that?

A. That was in 1874 or '75. I don't remember which.

Q. To whom did you make your report of that survey?

282 A. To the County Commissioners.

Q. At what time?

A. Immediately after I finished the survey.

Q. Did they accept or reject your report?

A. They accepted it, and appointed at the same time myself, Samuel Colvard and Ruben Carver to divide the county into townships.

Q. What did you and your fellow committeemen they appointed do?

A. We divided the county into three townships. We run the line, giving this boundary that we are now talking about, into the Yellow Creek Township, from the top of the mountain, in that boundary beyond Robinsville, as the state line between North Carolina and Tennessee.

Q. Then this land that is now in dispute is in Yellow Creek Township?

A. Yes, sir.

Mr. McCroskey: Respondent objects to the evidence of what action Graham County took in regard to the location of the boundaries of said county and its divisions into townships, because the records of the county is the best evidence.

Q. Did Graham County, subsequent to that time, make any change in its claim that this land on Slick Rock Creek was in Graham County?

A. No, sir, we always claimed it. We didn't know anything else but what it belonged to us.

Q. Did any claim of any kind ever come to your knowledge while you were living there that any body else claimed that country?

A. Not till ten or fifteen years ago I heard that Tennessee set up claim to it.

Q. When did you first hear that?

A. About fifteen years ago, maybe a little longer and maybe it was a little later than that.

Q. What school districts, if any, did you and your fellow committeemen lay out?

A. We didn't locate the school districts.

Q. Did you levy any school taxes in that Slick Rock county?

283 A. My knowledge is that there was no body there to go to school. That country was not settled then, and there are very few settlers in that country, even now. Some of the Deputies lived there and David Orr and his son; but I don't know any others down there. In that whole country there was a large boundary that no one lived in at all. We didn't have anything to do with the school districts.

Q. Do you know who, if any body, has paid the taxes on the land in that neighborhood of Slick Rock Creek?

A. I know the men that claimed it and give it in while I was tax lister. I suppose they paid their taxes. They listed the land in there.

Q. You listed the land in there?

A. Yes, sir, they listed the land in there for Graham County. I don't know anything about their paying the taxes.

Q. You had nothing to do with the collection of the taxes?

A. No, sir. Now, I want to make an explanation in justification of myself. When I first went there, and was tax lister for a number of years, the big companies gave their taxes in all together. They would give in the number of acres that they owned in the county and I would take them in at Robinsville. Sometime after that the townships got to contending for their part of the taxes. They said that each township ought to have its portion of the taxes paid in. But, as they first had it for two or three or five years, the taxes were given to me in a bulk, and a great many men listed their taxes so and so.

Q. How familiar are you with Graham County, and what has happened, since you have lived in the county?

A. I have been knowing all about the affairs of Graham County ever since I have lived there. I couldn't say what all has happened—there have been so many things.

Q. When you were United States Commissioner who exercised jurisdiction as such over this disputed territory?

A. Graham County. They had a fellow in there named Howell, and Ashley, a United States Marshal, came in there to arrest him and some other parties. I issued the warrants.

Q. What kind of a country is that up Slick Rock Creek?

A. My God: It's rough.

284 Q. Physically rough?

A. Yes, sir, and every other way that a man can think of. Slick Rock Creek is a well timbered country, but it is very rough.

Q. It is very mountainous?

A. Yes, sir. A man could run a blockade still there all of his life and never be caught. It has been done. They are running one there now. A man killed a fellow up there, and no body ever went after him.

Q. Did you know Sanders Calloway?

A. Yes, sir, I never knowed him by any other name than Sanders Calloway?

Q. Where did he live?

A. In Tennessee.

Q. At what place?

A. Riceville, or Cleveland, Tennessee.

Q. In what county?

A. Bradley County, I believe. I am not familiar with that part of the state.

Q. How well acquainted were you with him?

A. I was very well acquainted with him. I knowed him always when he was here.

Q. Did he frequently visit Cherokee County, North Carolina?

A. Yes, sir. I lived here, at Murphy, when he came.

Q. What was his business?

A. He was a banker when I knew him.

Q. Where was his bank?

A. He lived at Oconee, Tennessee.

Q. How far from Cleveland, and in what county?

A. I don't know. I know one thing, that his money was mighty good.

Q. Do you know how familiar he was with this country?

A. I don't know anything about his going over the country. He had business with men who did know the country.

Q. Do you know anything about his having transactions in land in North Carolina?

A. Only what I have heard.

285 Cross-examination.

By T. E. H. McCroskey, Esq.:

Subject to the foregoing exceptions.

Q. Were you ever on Slick Rock Creek at any time, except the times you mentioned, when you were locating the lines of Graham County?

A. No, sir, that was only time I was ever on Slick Rock Creek. I have never been in that country but once. I went through on that trail once, going to Tallassee, in Tennessee. I was going to Jonesville.

Q. David Orr lives east of the Hangover ridge, does he not?

A. I don't know. I suppose he does.

Q. You passed by his house as you were going over to Jonesville?

A. Yes, sir, I stayed at his house.

Q. Can't you remember that he lives east of the Hang Over ridge?

A. I think it is north east of the Hang Over. I don't think he lives directly east.

Q. Which side of the ridge does he live on, the North Carolina or Tennessee side?

A. The North Carolina side, we always considered it.

Q. You spoke of the Deputies living over in that country?

A. They live in there, as I have been informed. I know that the deputies live out there across the Tennessee River, but I don't know whereabouts in the Slick Rock region they live.

Q. In running up Slick Rock to locate the line of Graham County, how far up from the mouth did you run till you crossed the prong of the creek?

A. I don't know, I suppose I run four or five miles. I may have run further in there than that.

Q. Did you keep directly up the creek all of the way?

A. As near as I could until I struck a bluff.

Q. When you would strike bluffs what would you do?

A. I didn't take any particular bearing. I had never known anything but what that was the state line.

Q. Did you measure the line up the creek?

286 A. Yes, sir, the best we could. Mr. Carver was with me, and a young man by the name of Carver. The truth is, that we was careless about it. The controversy has come up about it since we made that survey. I thought I could go on and find the stone that Uncle Tom told me about sticking up there and run from there around to the river. I didn't consider that there was any difficulty about it at all.

Q. I understood you to say that you followed the spur up the top of the ridge from the creek?

A. I followed between the two Slick Rocks. There is a Little Slick Rock and a Big Slick Rock. I got on that spur and went on up. My recollection now is that, before we got to the top of the ridge, we went through a field, a little field of cleared ground, and then went on up.

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Q. Any how, you followed this spur up between Little Slick Rock and Big Slick Rock?
A. I followed that spur.
Q. Between Little Slick Rock and Big Slick Rock?
A. Yes, sir.
Q. What point did you strike at the top of the ridge?
A. I went right on up the ridge.
Q. Did you go over Little Fodder Stack?
A. I don't know. I don't remember enough about it to tell you about it.

Redirect examination.

By F. A. SONDLEY, Esq.:

Q. You don't know where Little Fodder Stack is?
A. No, sir.
Q. The point you went to, that you called Fodder Stack, you understood that was its name?
A. I don't know anything else since.
Q. Why were you indifferent about running that portion of the Graham County line down the Tennessee River?
A. Because I didn't think it was necessary to pay any attention to it, because that line had been established; and I thought if I could find that rock, that was as far as I need to go. I was
287 careless about it because I considered it the line. In fact, Mr. Carver contended all the time that it was not necessary to go down there at all, and we come very near not going down there.
Q. What is the dividing line between Graham County and Cherokee County?
A. This mountain that runs, from the point where they claim they started it down here, around till they strike the Swain County line.
Q. It follows the top of the mountain?
A. Yes, sir.
Q. What is the name of that mountain, the dividing line between Graham and Cherokee Counties?
A. These people over here call it the Cheowah Mountain.
Q. What neighborhood are you running in when you pass Fodder Stack,—what direction are you running in?
A. It runs a pretty much southeast course and then turns due east.
Q. Graham County was taken off of Cherokee?
A. Yes, sir, part of Cherokee. It was taken from Cherokee in 1872.
Q. Its eastern boundary is the Tennessee River?
A. Its northern boundary and eastern boundary,—No, sir, its northern and western boundary is the Tennessee River and Slick Rock Creek.
Q. The Tennessee River separates it from Graham County?
A. Yes, sir.

It is agreed by the parties hereto that the signing of the testimony by the witnesses may be waived and the testimony may be signed by the examiner.

N. G. PHILLIPS,
By EDMUND B. NORVELL,
Notary Public and Commissioner.

The further taking of testimony is continued until 9 a. m., June 22, 1910.

288 9 A. M., JUNE 22, 1910.

Counsel present representing the plaintiff, the State of North Carolina, Theodore F. Davidson, Esq., F. A. Sondley, Esq., Duff Merrick, Esq. and Ben Posey.

Counsel present representing the defendant, the State of Tennessee, T. E. H. McCroskey, Esq., and John F. Shields, Esq.

WILLIAM JENKINS, a witness of lawful age, after being first duly sworn, was called on behalf of the plaintiff and testified as follows:

Examined by F. A. SONDLEY, Esq.:

Q. Where do you live, Mr. Jenkins?
A. I live in Murphy, North Carolina.
Q. Where were you reared?
A. I was raised partly in Swain County. It is now Graham County.
Q. Those are North Carolina counties?
A. Yes, sir.
Q. What is your age?
A. I am seventy years old.
Q. What business have you been engaged in?
A. I was a farmer until I came to Murphy, and since I came to Murphy I have not been engaged in any business.
Q. Have you had any experience in wood craft and lumbering?
A. Yes, sir.
Q. To what extent?
A. I was in the lumber business five years.
Q. For whom did you work?
A. I worked for Lemmons and Wheeler, and some for Heyser and Belding.
Q. What was your father's name?
A. James Jenkins.
Q. Where did he live?
A. Since I was born he lived in Swain County and Graham County, on Hazel Creek.
Q. Did you ever know a man by the name of Foster?
A. Yes, sir, I knew him when I was a young man. I was acquainted with him two days, and then I saw him at other places.

289 Q. When did you last hear of him?

A. I cannot tell you. It has been a good while ago, thirty or thirty-five years years ago. I can't give the exact time.

Q. How old a man was he when you last knew him?

A. When I first saw him he looked to be thirty-five or forty.

Q. When you last saw him how old did he appear to be?

A. He was getting gray. He looked to be sixty.

Q. Did you ever see him at your father's house?

A. Yes, sir.

Q. Please state the circumstances under which he was there and any conversation, if you heard any, in regard to the line between the State of North Carolina and the State of Tennessee as originally located?

A. He started to Tennessee and said that he was going over to Knoxville. He stayed all night at our house and, the next morning, went to Eagle Creek. There were two roads out there on the mountain, one that went on and one that turned back; and he got lost and was in the mountains two days. He struck down the stream and came back to our house and stayed there two days, and I believe he stayed three nights. He had been in a laurel, rough country, and told us how he laid out. My father was gone from home when he came there, and after my father came home they got to talking in a business way. He told my father that he was along when the state line was run and told him a right smart about it. He told him that the line went down Smoky Mountain and out at the end of Smoky Mountain and across the Tennessee River. He said that the line crossed the river at the mouth of Slick Rock and nine miles above at Tellassee Old Town House, as he explained. I remember that he said they went up Slick Rock till they struck the Tellassee trail. He said they camped there, and I believe he said they stayed there a day or two and had some rations packed to them; and then they went up to the point of the ridge that came down from Big Fodder Stack,—they went up that ridge to the top of Big Fodder Sack and with that top to the top of Unicoy Mountain near the top of Bob's Bald and Stratton's Bald, to a top called Laurel Top, on the Smoky Mountains; and he said something about State
290 Ridge there. That is, as far as I remember it, what he said about it.

Q. You spoke of their going that way. Did he say whether they made the line that way or not?

A. Yes, sir, he said they ran it that way, same as they did on the Smoky Mountain.

Q How did he say they went with regard to State Ridge?

A. He said they went down State Ridge and crossed the head of Tellico River.

Q. With the line?

A. Yes, sir.

Q. Where is James Jenkins?

A. He is dead. He has been dead about thirty-four years.

Q. Did you ever see any portion of that state line as originally run?

A. Yes, sir.

Q. What part of it have you seen?

Mr. McCrosky: The respondent excepts to the testimony of the witness in attempting to detail the statements and declarations of Forster as to the location of the state line, because the same is purely hearsay and in every sense incompetent.

A. I have saw what was said to be the line by old men that showed it to me, when I was a young man, from the head of Bone Valley Creek and the end of the Smoky Mountain to the mouth of Slick Rock Creek, then up Slick Rock Creek and Fodder Stack, up the Bob's Bald; and I have seen marks that was said to be state line marks by old men when I was there.

Q. In the line you stated that you had seen trees on, how were the marks made?

A. With a blaze and two hacks above the blaze, and three hacks on the line next to the side line.

Q. By line trees you mean fore-and-aft trees?

A. Fore and aft trees are marked with one hack and sometimes two hacks above the blaze.

Q. Where did you see those trees on Slick Rock Creek, how far up?

291 A. The first tree was a spruce pine about 20 yards from the mouth of the creek, then they run up the creek and the marks crosses the creek several times on each side of the creek. I have seen them up to where Fodder Stack runs to the creek; and then I have seen them on that ridge, up to the top of Fodder Stack.

Q. Do you mean Big Fodder Stack?

A. Yes, sir.

Q. I under-stand you to say that you have seen those trees marked with state line marks from Slick Rock Creek, on up that ridge, to the top of Fodder Stack?

A. Yes, sir.

Q. Did Forster say anything about how far they ran up Slick Rock Creek when they were making that original survey?

A. About three miles and half; and then they left the creek and went up the ridge. I believe he said it was something like three and a half miles.

Q. When was it you saw those trees marked as you say they were?

A. I was there once about 1859; and then I wasn't there any more until about '69; and then I have been there off and on every few years since. I haven't studied much about it for the last fifteen years. It was marked very plain then. From '65 to '85 I was there pretty often up and down Slick Rock Creek. When I hunted there I saw them often.

Q. You used to hunt bears up and down Slick Rock Creek and on those neighboring ridges?

A. Yes, sir; up Fodder Stack and down that Bald that leads off from Fodder Stack. In going up and down Slick Rock Creek there was very good places for bear; and I hunted in there every year,

more or less, until about fifteen years ago, when the game got killed out and I stopped.

Q. Do you remember any declarations in the Forster conversation you referred to about what they did when they reached the Tennessee River, how they run on the east side?

A. I don't remember exactly about that. It seems to me that they crossed on rafts, but I would not be positive about that. Some
292 went down and crossed at Tellassee Old Town House, and come back on the trail, and went down to the mouth of Slick Rock Creek.

Q. You spoke of the Tellassee Trail. Which Tellassee Trail, on which side of the river?

A. On the south side of the river.

Q. Was there anything said in that conversation about what they did before crossing in regard to making sure that they got the opposite point on the other side?

A. I don't remember anything about that. He spoke about some of them crossing on the raft.

Q. On the state line that you have spoken of, out from Big Fodder Stack as far as the Tellico River, have you ever seen any state line trees?

A. I have never seen any there. I was not in that range as much as I was from the Bob Bald back this way.

Q. You stated a while ago that old men had showed you where the state line was?

A. On the Smoky Mountain they showed me. I used to stay there with an old man named De Armond when I was a boy. He was an old man and a Tennesseean and he told me that there was where the state line was.

Q. Was that Thomas De Armond?

A. Yes, sir. I used to stay there when I was a kid.

Q. Did any of those old men ever accompany you on hunting trips up Slick Rock Creek?

A. I don't remember any except my father. He was there one time.

Q. Did you see any of the state line trees on that trip?

A. I don't remember whether we talked anything about it on that trip.

Q. You spoke of Tom De Armond showing you state line trees on the north side of the Tennessee River. How did those marks compare with the marks you saw on Slick Rock Creek and from there up to Fodder Stack?

A. They appeared to be the same.

Q. Were they old or young marks when you saw them?

A. They were old marks.

Q. Do you know how the Tellassee Trails run along up and down the Tennessee River or in its neighborhood?

293 A. Yes, sir; I know about where they run. I have been on them a lot of the way.

Q. Describe the running of the Tellassee Trail on the north side of the river?

A. There is no Tellassee trail on the north side. The south side, as I understand it, is on this side of the river. There is where the Tellassee trail is.

Q. Describe how it runs?

A. It starts in at the mouth of the Cheowah River. It is a distinct trail marked out and rocks piled along the trail. In some places the trail is cut out two and a half feet deep. It is an old Indian trail and the sign always shows. I can take that trail today. It runs about a mile from the river—in some places it is not over a half mile. It crosses Slick Rock Gap a mile east of Slick Rock—a mile southeast. It crosses through the gap and goes down the branch and right on down the side of the branch; then it goes up the ridge and crosses the next mountain.—I don't know what mountain they call it.—then it goes through on the head of First Creek and comes in at Hardin Camp. It keeps about a mile from the river, sometimes it is not more than a half mile. The Indians done all of their packing and trailing through there.

Q. Between what points?

A. Robinsville and Valley Town, backwards and forwards. When I can first recollect they kept it wore slick with Indian trails.

Q. It practically runs parallel with the creek?

A. Yes, sir.

Q. What does that rock pile mean?

A. I don't know, except that when you would see one pass he would pick up a rock and lay it on that pile.

Q. What impression was made on your mind about this mountain being called Fodder Stack in connection with that conversation of Forster's about going to Fodder Stack?

A. Forster proposed to sell father a piece of land and he said it run up Fodder Stack, and I laughed about a Big Fodder Stack being in that mountain; and my father said that it was the name of the mountain.

294 WM. JENKINS.
By EDMUND B. NORVELL.
Notary Public & Commissioner.

No cross-examination.

295 9 A. M., JUNE 23RD, 1910.

The taking of testimony resumed.

Counsel present representing the plaintiff, the State of North Carolina, Theodore F. Davidson, Esq., W. R. Hopkins, Esq., and Ben Posey, Esq.

Counsel present representing the defendant, the State of Tennessee, T. E. H. McCroskey, Esq., and John Franklin Shields, Esq.

DAVID A. HYDE, a witness of lawful age, after being first duly sworn, was called on behalf of the plaintiff and testified as follows:

Examined by THEODORE F. DAVIDSON, Esq.:

Q. How old are you?

A. I am seventy-five.

Q. Where do you live?
A. In Graham County, North Carolina.
Q. In what part of the county?
A. Stecoah Township.
Q. How long have you lived in that county?
A. I have lived in that county ever since I was a little boy. I will say as much as sixty years.
Q. Did you know J. W. C. Piercey, commonly known as Wesley Piercey?
A. Yes, sir.
Q. He has been dead a good many years, I believe?
A. Yes, sir. I never seen him when he was dead, but I have not heard of him in a good many years and he has disappeared.
Q. What public position did he occupy?
A. He was county surveyor of Cherokee County.
Q. For what length of time?
A. For quite a while.
Q. Do you remember when his first services as county surveyor began?
A. Yes, sir.
Q. When was that?
A. I don't remember the date exactly.
296 Q. Was it soon after the organization of Cherokee County?
A. Yes, sir, I think it was.
Q. Did he occupy that place continuously until his death?
A. Yes, sir; I think he did.
Q. Were you ever present at a conversation between him and Thomas Tatham in regard to the state line between North Carolina and Tennessee?
A. Yes, sir.
Q. Did you know Thomas Tatham?
A. Yes, sir, he lived near where Andrews now is.
Q. How far did he live from Piercey?
A. About a mile.
Q. They were neighbors, then?
A. Yes, sir.
Q. Will you state what you heard in this conversation, at Mr. Tatham's, and state also who was present, whom you now remember, and state what was said about the state line?
A. I can't remember just how the talk came up. I was quite young at that time. It was at the dinner table that the talk commenced about the Tennessee line and North Carolina. He said that it started at the river and run up Slick Rock Creek. Piercey was inquiring about the state line, and the old man Thomas Tatham said that it commenced at Slick Rock and run up the creek, and took in the main divides of the mountain, and run then to the main top of Fodder Stack.
Q. Was there anything said in that conversation about how Fodder Stack got its name?
A. The old man Tatham said they give it that name.
Q. Who did?

A. The company he was with.

Q. What company?

A. The company running the state line.

Q. Did he say that he was with them when they were running the state line?

A. Yes, sir.

297 Q. He said they ran the line from the mouth of Slick Rock Creek?

A. Yes, sir, and they run up the creek to the divides; and then to the main top of Fodder Stack, and they named that Fodder Stack. I think Squire N. G. Phillips was there at that time.

Q. Did you go with Mr. Piercey over to Mr. Tatham's at that time?

A. Yes, sir. I went to church, and we went there for dinner.

Q. Did you live with Mr. Piercey at that time?

A. Yes, sir, I lived with him during the years 1855-56.

Q. It was at that time you heard this conversation?

A. Yes, sir, I think it was in the year 1855.

Q. Have you ever been along that line?

A. I never went up Slick Rock very far. I have come across from Tennessee on to Slick Rock to the forks, and then took the Belding Trail and come to Robinsville.

Q. What is the Belding Trail?

A. The Beldings built a trail to Slick Rock Creek from Santeetlah.

Q. What Belding was that?

A. It was D. W. Belding & Company, is all I know.

Q. Did they claim any land in there?

A. Yes, sir, they claimed land on Deep Creek and Santeetlah.

Q. Did they claim any land on Slick Rock Creek?

A. Yes, sir, Slick Rock Creek was claimed to be the line.

Q. Have you ever occupied any official position in Graham County?

A. Yes, sir; I was coroner for a while, I was Tax Collector in 1885, and I acted as sheriff in the absence of the sheriff.

Q. Do you know anything about the listing and collection of taxes by the North Carolina authorities upon Slick Rock Creek?

A. How is that?

Q. Do you know anything about the listing of those lands for taxes upon Slick Rock Creek?

A. Yes, sir; the Belding Company owned a lot of the land in that country. J. W. Cooper paid a lot of taxes for the Belding Company in there.

Q. Did that include the land on Slick Rock Creek?

298 A. I suppose it did.

Q. What was the length of that trail built by the Belding Company?

A. It must have been ten or twelve miles long.

Q. Was it a trail, just cut out in the forest, or was it leveled and dug down?

A. There was a great deal of it dug and leveled very nice.

Q. You say it was some ten or twelve miles long?
A. Yes, sir.
Q. How close did it come to Slick Rock Creek?
A. It seems to me that it must have come within a quarter of a mile of Slick Rock Creek, going down yond- way toward Tennessee.

Mr. McCroskey: Respondent excepts to the answers and testimony of witness in so far as he details the conversations and declarations of Thomas Tatham as to the location of the state line, because the same is hearsay and incompetent, and for other reasons as well.

No cross-examination.

DAVID A. HYDE,
By EDMUND B. NORVELL.
Notary Public & Com'r.

299 By consent of J. N. Moody, representing the complainant, and T. E. H. McCroskey, representing the respondent, notice and all other requirements being waived, the evidence of N. F. Cooper is this, the 29th day of June, 1910, taken at the home of N. F. Cooper, on East Buffalo in Graham County, North Carolina.

N. F. Cooper, witness for complainant, after being duly sworn and examined by J. N. Moody, attorney for complainant, says:
Q. 1. What is your age, Mr. Cooper?
A. I was 82 years old the 7th day of June, 1910.
Q. 2. How long have you lived in Graham County?
A. I have lived in what is now known as Graham County since 1838.
Q. 3. Are you acquainted with that part of Graham County that is known as Slick Rock?
A. Tole-ably well. I have been on Slick Rock, on and around the head of it, and near the mouth, and maybe on some other points on it.
Q. 4. Will you please state what you know about the State line between the States of North Carolina and Tennessee in the vicinity of Slick Rock?
A. I do not know anything about the State line in the Slick Rock County, except by hearsay.
Q. 5. Please state what you heard and who told you?
A. Along about 1853 or 1854, I was in Murphy quite often, and I was in conversation with Dr. J. W. Patton and Dr. J. M. Lyle, also an old gentleman by the name of J. J. Turnbill. I heard these men state about the state line, where it crossed the Tennessee River. They claimed that it crossed at the mouth of Slick Rock, and they found a tree there. They alleged that it was a fore-and-aft tree. I will not be positive, but I think they said it was a beech. They alleged that it went up Slick Rock Creek, and that Dr. Lyle had made an entry there and Piercy had surveyed it: My understanding was that Dr. Lyle had placed the entry, one line on the State line of North Carolina and Tennessee.

Q. 6. Are the above named gentlemen, Dr. Lyle, Dr. Patton and Mr. Turnbill alive or dead?

300 A. My understanding is that they are dead.

Q. 7. Who was the man Piercy you spoke of?

A. His name was J. W. C. Piercy, County Surveyor of Cherokee County, before Graham was made a county.

Q. 8. Please state whether or not you had any conversation or conversations with Mr. Piercy about this state line?

A. I heard him speak of the state line a great many times. Yes. He always alleged that it ran up Slick Rock Creek to a forked ridge.

Q. 9. Did Mr. Piercy speak to you about surveying entries in that country for anybody?

A. I heard him speak of surveying a tract of land for A. N. Colvard of about 17,000 acres. He said that the big entry would take the small entries that were made inside of the big entry. He said in that conversation that the State line would run up Slick Rock Creek to the forked ridge.

In apt time respondent objected and excepts to the foregoing testimony of the witness in so far as he testifies to conversations with Dr. Patton, Dr. Lyle, Mr. Turnbill and Mr. Piercy, as detailed in answers to questions Nos. 5, 8, and 9, because the same is hearsay and incompetent.

Cross-examination.

By T. E. H. McCroskey, Esq., attorney for respondent, subject to the foregoing objections and exceptions, as follows:

Q. 1. Did either of the above named parties state to you where the state line reached the Tennessee River from the North side; and, if so, which one of the witnesses, and what did he say in regard thereto?

A. I do not know that I heard either of them say where it reached the river from the North or northeast side of the river.

Q. 2. How far did Mr. Piercy say they ran up Slick Rock Creek before they reached the Forked Ridge?

A. I never heard him say how far.

301 Q. 3. Do you know where the Forked Ridge is?

A. I do not.

N. F. COOPER.

By EDMUND B. NORVELL,
Notary Public & Commissioner.

Subscribed and sworn to before me this the 29th day of June 1910.

EDMUND B. NORVELL,
Notary Public and Commissioner.

302 HOME OF ROPETWISTER.
GRAHAM COUNTY, N. C., SANTEETLA CREEK.
June 30th, 1910.

ROPETWISTER CONSEENE, a Cherokee Indian, witness for complainant, after being duly sworn as the law directs, testified as follows:

There being present representing the complainant J. N. Moody, Esq., and representing the respondent, T. E. H. McCroskey, Esq.

Examined by Mr. MOODY:

Q. 1. What is your name and how old are you?

A. Ropetwister, Conseene, I am 78 years of age.

Q. 2. Do you remember when the Cherokee Indians were taken West by the Government?

A. Yes, I was a pretty good sized boy. I went with them to the Mississippi and came back.

Q. 3. Were you large enough at that time to walk and carry a load or pack?

A. Yes, I carried a pack.

Q. 4. Who went with you to the Mississippi River at that time?

A. One of them was my grandfather, whose name was Scoyah or Worm, and another whose name was "Old Charley" and other old men; also my father and mother were along.

Q. 5. Have you any record of your age?

A. No.

Q. 6. How do you know that you are 78 years old?

A. Harry Smith, your father, counted it up for me, that is the father of Lewis Smith, the Interpreter, counted it up for me.

Q. 7. That is all you know about your age?

A. Yes.

Q. 8. Where is your father now?

A. He is buried down on the creek below here.

Q. 9. How long has he been dead?

A. A short while before the close of the Civil War.

303 Q. 10. How long have you lived in this country?

A. I cannot say how long. When my father died I lived across Santeetlah Creek from here.

Q. 11. Where were you living when the Cherokee Indians were taken away from here?

A. Away across from here at a place called "Where You Dig Out a Canoe."

Q. 12. Was that on the Cheowah River?

A. It was not exactly where the place is known as, "Where you Dig Out a Canoe." It was on the waters of Cheowah River, on a branch.

Q. 13. Was that river known as Cheowah River when you were a boy?

A. Yes.

Q. 14. Was it called Cheowah by the old men of the county at that time?

A. Yes. That was the only name I ever heard.

Q. 15. Are you acquainted with a creek in this county called Slick Rock Creek?

A. Yes, I am well acquainted with it. I have been to it frequently.

Q. 16. What were you doing on that creek?

A. There is where I would go to hunt deer.

Q. 17. Who went with you there to hunt deer?

A. My brother and father.

Q. 18. Did you ever have any talk with your father about where the state line between North Carolina and Tennessee at Slick Rock runs?

A. Yes, he showed me where it ran.

Q. 19. Did he show you a number of times or several times?

A. Yes, every time we would go out there he would show me and tell me, here is North Carolina, and Here is Tennessee, and the State line is right here.

Q. 20. Where did he show you the state line ran?

A. It ran up a ridge and it ran into a gap and a stake was set up there and it was blazed. The stake was off to the right of the line.

Q. 21. Was that this side or the other side of Slick Rock from Santeetla Creek in Graham County?

A. It was on you side of Slick Rock Creek. On the sunny side or south side.

304 Q. 22. Did you father show you where the state line crossed Tennessee River?

A. Yes.

Q. 23. Where was that?

A. Down at the mouth of Slick Rock Creek.

Q. 24. Did your father show you which way the line ran from the mouth of Slick Rock Creek?

A. Yes.

Q. 25. Tell how it was?

A. He said it went on to the Smoky Mountain, and went to a thicket that they could not go through, and they hung up a flag there, and as they went on they set up a rock about three feet high, on side of a trail in the direction of Ball Play. The line shown me was running toward Georgia. He said after going to the thicket that they could not get through they came back to the mouth of Slick Rock Creek and went on the line towards Georgia. This is the line on which the rock was set up.

Q. 26. Did you ever see the rock your father told you about?

A. No. A man by the name of Organder pulled that rock up.

Q. 27. Which way did your father say the state line was run from the mouth of Slick Rock Creek with reference to the creek on the south side of Tennessee River?

A. From the mouth of the creek it ran up the sunny or south side of the hill all the way up. Where the creek turns the line kept straight on into a gap. The line was run from the turn of the creek into a gap and left Fodder Stack to the right.

Q. 28. From the time the line left the river at the mouth of the

creek till it reached the turn of the creek you spoke of, was it run close to the creek?

A. Yes, it ran along with the creek till it came to the turn.

Q. 29. When the line left the creek at the turn which way did it go?

A. It went straight into a gap.

Q. 30. Did it go up a ridge from the creek?

A. No. It goes sidling straight into the gap.

305 In apt time respondent objected and excepted to the foregoing questions and answers because the same is hearsay and incompetent, especially the witness detailing the conversation with his father, the same being hearsay and incompetent.

Cross-examination.

By T. E. H. McCroskey, Esq., atttorney for respondent, subject to the foregoing objections and exceptions:

Q. 1. Where did your father say the line came to the river on the opposite side of the river from Slick Rock Creek?

A. Opposite the mouth of Slick Rock Creek.

Q. 2. When it left the mouth of Slick Rock Creek did it follow a ridge?

A. No, it went up on the sunny or south side of the hill.

Q. 3. Do you know where Little Slick Rock Creek comes into the large creek?

A. Yes, I have been there frequently.

Q. 4. How far is that from the mouth of the main creek?

A. About a mile.

Q. 5. Did the line cross Little Slick Rock or go around the head of it?

A. Yes, it crosses Little Slick Rock Creek close to its mouth.

Q. 6. Then how far does the line go before it leaves the creek.

A. I reckon it is about three miles from where it crosses Little Slick Rock Creek to where it leaves the Creek.

Q. 7. Were there any marks along there on the trees showing the line, and if so, what were the marks?

A. Yes, there were marks there. Three hacks.

Q. 8. Were they all on the same side of the creek?

A. Yes.

Q. 9. Which side of the tree were the marks on, that is the side going up the creek, the side next to the creek or the side from the creek?

A. On both sids where they came to a center tree or a fore-and-aft tree.

306 Redirect examination by J. N. Moody, Esq.:

Q. 1. Were all of the trees marked with three hacks?

A. Yes.

Q. 2. Did any of the trees have blazes on them?

A. Yes, he told me some of them had blazes on them.

Further cross-examination by T. E. H. McCroskey, Esq.:

Q. —. Did you see the trees yourself that had the blazes on them?
A. No, my father saw them and told me it had been surveyed a long time ago.
Q. 2. Did you see the trees that had hacks on them?
A. I saw the trees, but did not see the hacks. They were worn out. He told me this was the tree that had the hacks.

And further deponent sayeth not.

ROPETWISTER CONSEENE,
By EDMUND B. NORVELL,
Notary Public and Commissioner.

Subscribed and sworn to before me this the 30th day of June, 1910.

EDMUND B. NORVELL,
Notary Public and Commissioner.

The same agreement was made in regard to the typewriting, signing the reading of the foregoing deposition as was made relative to the deposition of N. F. Cooper.
June 30th, 1910.

EDMUND B. NORVELL,
Notary Public and Commissioner.

307 William Williams, a witness of lawful age, after being first duly sworn, was introduced on behalf of the plaintiff and testified as follows:

Examined by Theodore F. Davidson, Esq.:

Q. What is your name?
A. William Williams.
Q. What is your age?
A. I will be 77 the 7th day of October next.
Q. Where were you born?
A. In Monroe County
Q. What state.
A. The State of Tennessee.
Q. Where do you now reside?
A. In Monroe County, Tennessee.
Q. How far from the place of your birth?
A. Sixteen or seventeen miles.
Q. Do you know the country there, known as the Slick Rock Territory?
A. I have been all over it time and again, ever since I was big enough to be in the mountains I have been over that part of the country.
Q. How far from the mouth of that creek were you born and now reside?
A. It is about eight miles from where I was born to what is said to be the state line.

Q. Eight miles you say?
A. Seven or eight miles, I guess.
Q. Slick Rock Creek runs into the Tennessee River?
A. Yes, sir.
Q. From which side?
A. From the right hand side as you go up the stream.
Q. Have you been in that country on Slick Rock Creek?
A. I have been all over it.
Q. More than once?
A. Yes, sir, I have been over it from the head to the mouth. I used to herd cattle in there when I lived in Monroe County.
308 three miles, from the state line, three years on the Blount County side.
Q. Monroe County is on the South side of the river in the State of Tennessee?
A. Yes, sir.
Q. What was your father's name?
A. William Williams.
Q. Is he living or dead?
A. He is dead.
Q. How long has he been dead?
A. He has been dead since 1856 or 1855.
Q. Did you ever have any conversation with him about the state line or the location of the state line?
A. Many a time.
Q. Did he in any of those conversations tell you where the state line ran?
A. Yes, sir, he said it run up Slick Rock Creek to the forks of the creek and then it run up Big Stack and from there on to Unicoy Mountain.
Q. Did he ever say anything about where the line crossed Tennessee River?
A. No, sir, I don't remember him telling me about how it crossed.
Q. When you used the words "Big Stack" what did you mean?
A. The main mountain. There is Big Stack and Little Stack,—those two stacks.
Q. Did you ever hear it called Big Fodder Stack?
A. Yes, sir, it is the same mountain.
Q. Were you ever along that mountain?
A. I have been all over the line, but I never noticed it. The state line was never in dispute until about fifteen years ago. I never heard any body dispute the line until Bill Deputy and Mr. McCroskey come there. Bill Deputy said it crossed at the mouth of Checah and then they said it crossed above there at Big Shoals.
Q. What is the difference in the distance?
A. About a mile.
309 Q. Where is Big Shoals?
A. About a mile above that.
Q. Did Deputy have any interest in the state line?
A. Yes, sir, Hebard had put him in as his agent to look after that line.

Q. Do you know whether there was any common reputation among the old people of that country as to the location of the state line?

A. No, sir, it was a settled question. It was the line both for North Carolina and Tennessee. North Carolina claimed to the creek and Tennessee claimed to the creek. The old many Deputy abused his wife and crossed Slick Rock Creek and built him a house there, and he thought that he was out of the state. He was Bill Deputy's father. He told the officers that he was outside of the state and the officers went back. Mr. McCroskey knows how it is.

Q. Did you know one J. W. C. Piercy?

A. Yes, sir, I have carried the chain for him, the Lord only knows how many times.

Q. What was his business?

A. He was county surveyer for Cherokee County, North Carolina.

Q. Did you ever have any talk with him about where the line ran?

A. Yes, sir,—Slick Rock Creek. Bill Thomas made an entry right above the mouth of Slick Rock Creek, and he said that he could not go down any further, because an entry had been put in. He said it commenced at a big forked maple. We run that line out.

Q. Who was along?

A. The Johnson boys.

Q. Was Piercy along?

A. Yes, sir.

Q. Was anything said about the state line?

A. He said that he could not go any further down because of another entry.

Q. Did he say where the state Line was?

A. He said it was on Slick Rock Creek.

Q. Have you ever been on the Smoky Mountain to the northeast of the river there?

310 A. Yes, sir. I lived for four years in three miles of that place. I herded cattle there. The state line was not in dispute at that time. I have looked across from Smoky Mountain to Big Stack. I have looked many a time in a straight direct road through Slick Rock and up to Big Stack.

Q. Standing on the Smoky Mountain and looking across the Tennessee river Big Fodder Stack is in the main line?

A. Yes, sir.

Q. Could you see it plainly?

A. Yes, sir, it is as plain as my hand and I can see the whole boundary.

Q. Do you remember any other persons you have heard speak about the state line except Mr. Piercy and your father?

A. I have heard Joseph Milligan, Harve Bright, John Bright, Mike Harrisson, William Harrisson, and all of those old people who lived there. When my father moved to North Carolina I lived with my father till I was grown and then I married and moved back to the same farm that my father sold.

Q. Are those old people whose names you mentioned living or dead?

A. They are dead.

Q. Were they citizens of North Carolina or Tennessee?

A. Tennessee.

Q. Did they live in the neighborhood or vicinity of the line?

A. Yes, sir, right where I said I was born.

Q. How far from the line at Slick Rock Creek?

A. Maybe 10 or 15 or more miles.

Q. Did they have any opportunity for knowing where the state line was?

A. They said that was the state line.

Q. Do you know whether they owned cattle or ranged cattle in there?

A. My father herded cattle below the mouth of Slick Rock Creek in the Big Bend; and then when he moved to North Carolina, on Yellow Creek; and Mr. McKee brought the cattle to him and was herding them between David Orr's and Slick Rock Creek, and the North Carolina people notified my father to move the cattle,
311 and he moved them across Slick Rock Creek and herded them there in the Big Bend, below Slick Rock Creek.

Q. Do you know whether those men whom you have mentioned also owned and ranged stock in those mountains?

A. Yes, sir, Harve Bright ranged stock in there.

Q. Where is Tellassee Ford?

A. Tellassee Ford is down there on an entry of land that Hardin made, near the Milligan farm.

Q. How far from Slick Rock Creek?

A. Seven or eight miles.

Q. How far is Tellassee Ford from Old Town?

A. Below it about a quarter of a mile.

Q. What is the character of the Tennessee river from Tellassee old town down to Tellassee Ford?

A. It is a rough place.

Q. Is it a strong and violent stream?

A. Yes, sir.

Q. Is there any fordable place along there?

A. No, sir, you cannot ford it above Tellassee Ford at all.

Q. Is there a good ford at Tellassee old town?

A. Yes, sir, there is the best ford I ever saw. I lived there four or five years after I was grown.

Q. Did you ever hear of Tellassee Old Trail?

A. Yes, sir, the Indian trail went up Tellassee Mountain and crossed First Creek, crossed First Creek and went up a little spur called "Greasy Point," then down the spur to Slick Rock Creek and crossed and went in there below the trail where it is now. There was no trail down Little Slick Rock until the old man Hudson moved from Tennessee to where David Orr is now. He went there and built a house and made a road and a settlement.

Q. In giving a description of that trail,—did you examine it as leaving Tellassee Ford?

A. Yes, sir, right up the mountain point.

Q. Where did it cross Slick Rock Creek?

312 A. Below where it crosses now.

Q. How does it go out?

A. Right up into the gap of the mountain.

Q. Is that a well known trail?

A. It used to be. It is nearly growed up now.

Q. When you first knew that trail was there any settlement in there?

A. No, sir, nobody lived on Slick Rock Creek at all.

Q. Was it a smooth or rough mountainous country?

A. It was a rough mountainous country.

Q. There was no settlement at all in there?

A. No, sir, none at all at that time.

Q. How far along the mountain to the west have you ever been?

A. I have been out a mile from Big Stack, out to the Harrison Gap on the Glen Cove Gap.

Q. Are there any roads out that way?

A. Only trails.

Q. Do you know anything about your father going from Tennessee, what is claimed to be Tennessee, across the line and taking out a grant for Colonel Thomas?

A. Jim Anderson was the agent for Bill Thomas, and Jim Anderson got me and John Carrington,—we took some rations with us. We went down pretty close to the mouth of Slick Rock Creek and camped there and cut a rail tree down and we fenced in a little piece of ground there the best we could.

Q. On which side of the creek were you?

A. Back on the North Carolina side.

Q. What did you do that for?

A. The people that took up land in North Carolina would build a house on it and make an improvement and that would give them the privilege of taking up the land, and my father went to the mouth of the creek and made that entry.

Q. The Bill Thomas that you speak of, was that Colonel William H. Thomas?

A. Yes, sir. He was a prominent man in that country at that time.

Q. Don't you know that for many years he represented
313 that Senatorial District in North Carolina?

A. Yes, sir.

Q. Do you know anything about the "copper fever" that broke out in that country back in the '50's?

A. Yes, sir, men would come around and take options on the people's farms and promise to commence to dig for copper within a certain time,—they would bind themselves to begin within three weeks or a month.

Q. Do you know whether or not that "copper fever" extended to the North Carolina side?

A. Mike Harrisson thought that he had struck some down there on Big Stack. Mike Harrisson told me himself that he got a letter from an old surveyer and said that the line went up Slick Rock

Creek. He said that it was rough and they made the line up that way.

Q. Is Mike Harrisson living or dead?

A. He is dead.

Q. Do you know what that surveyor's name was?

A. No, sir, I don't remember. It has been a long time ago. A man in another state could not hold land in North Carolina at that time.

Q. Did you know a man in that territory by the name of Bob Mashburn?

A. Yes, sir, me and Bob Mashburn has stayed together many a time.

Q. Do you know his father's name?

A. Yes, sir, it was Levi Mashburn.

Q. Did you ever hear Levi Mashburn or his son say anything about this state line?

A. Yes, sir, I heard his father talk about it.

Q. What did he say about it?

A. He said it went up the creek. Everyone said that the state line went up the creek until here within the last few years.

Q. Did you know a man by the name of Clinton Hudson?

A. Yes, sir, I have stayed at his house many a night.

Q. Is he living or dead?

A. He is dead.

Q. Did he live on the North Carolina or Tennessee side?

A. On the North Carolina side. He bought a farm and
314 lived there for years.

Q. Where is that farm?

A. It runs off from the Hangover lead, in the neighborhood of where David Orr now lives—David Orr lives in the same house.

Q. Was Hudson the first man to improve that property?

A. Yes, sir.

Q. That is on Bear Creek?

A. Yes, sir.

Q. Did you ever hear Hudson say anything about the location of the state line?

A. Yes, sir, he said it went up Slick Rock Creek. They had a mill there and done their milling there for years.

Q. Hudson moved from Tennessee over there?

A. Yes, sir.

Q. Did you know Wash Morgan?

A. Yes, sir.

Q. Who was he?

A. He was the son of old Gideon Morgan, a part Indian.

Q. Was he a man of any prominence?

A. Yes, sir, he owned a large farm in Tennessee.

Q. Was he a man of intelligence and information?

A. Yes, sir.

Q. Do you know whether or not he was in the Mexican war?

A. Yes, sir, him and Levi Mashburn was both in the war.

Q. Did you ever hear Morgan speak of this line?

A. Likely I did, but I don't remember about that.

Q. I will ask you whether or not it is a fact, that down in that territory whenever a man desired to evade the law from the officials of Tennessee, if he would not just cross the creek and consider himself in North Carolina? Wasn't that a country of refuge?

A. Yes, sir. I did it once myself. I had a little fight across the river. You couldn't prove it on me here, but I will just admit it.

Respondent excepts to so much of the foregoing deposition of the witness as purports to detail the declarations of his father,
315 Piercy, Mike Harrison and others; also to the understanding of the witness himself and other parties whose names were mentioned by the witness.

Cross-examination, subject to the foregoing exceptions, by T. E. H. McCroskey, Esq.:

Q. Mr. Williams, if I understand you correctly, you said that the surveyors, in running out the Ocoa Land District, when they got to Slick Rock Creek the territory was so rough they made Slick Rock Creek the line?

A. Yes, sir, that is what Mike Harrisson told me.

Q. That the surveyors in running out the Ocoa District made that the line?

A. No, sir, in running the line between the two states.

Q. Wasn't that in locating the Ocoa Land District?

A. No, sir, it was in running out the state line.

Q. Didn't you state that the surveyors when locating the Ocoa Land District ran up Slick Rock Creek?

A. So far as Ocoa is concerned, I never heard that mentioned.

Q. I understood you to say that Mr. Harrison wrote to those people and when they wrote back to him they said that they located the line of the Ocoa Land District up Slick Rock Creek?

A. No, sir, I said that when the surveyors run the line between the two states they run up Slick Rock Creek and up Big Stack and on out to Unicoi.

Q. You said in your examination in chief that you could stand on the ridge north of the river and look across on the east side and see the Fodder Stack lead?

A. Yes, sir, you can see all over the Hangover and Fodder Stack lead.

Q. You could see Hangover lead too?

A. Yes, sir, it is very crooked.

Q. Was the Hangover very plain?

A. The state line was just as crooked as my elbow.

Q. You could see the Hangover very plain?

—. ——.

Q. You could see it very plain?

A. Yes, sir, very plain. You have lived in that country long enough, you know where the state line runs.

316 Redirect examination.

THEODORE F. DAVIDSON, Esq.:

Q. I understood you to say in your examination in chief, that standing on the Smoky Mountain and looking down, Fodder Stack is in a straight line?

A. Yes, sir.

Q. Hangover is not in a straight line?

A. No, sir. Send any man you want to there and see whether the old man Williams is right or wrong.

WILLIAM WILLIAMS,
By EDMUND B. NORVELL,
Notary Public & Commissioner.

317 JAMES WILLIAMS, a witness of lawful age, after being first duly sworn, was called on behalf of the plaintiff and testified as follows:

Examined by THEODORE F. DAVIDSON, Esq.:

Q. What is your age?

A. I will be 85 the 27th of August.

Q. Where do you live?

A. In McMinn County, State of Tennessee.

Q. Where were you born and raised?

A. My father and mother said I was born in Hillard's Cove, Blount County, Tennessee. My father moved from there when I was a boy down on the Tennessee River to a farm, and then we moved to Monroe County.

Q. How far was that from the mouth of Slick Rock?

A. I don't know exactly how far. It was about seven or eight miles.

Q. Did you ever live in that neighborhood, and, if so, how long?

A. Pretty much all of my life. I lived a while in North Carolina,—three or four years.

Q. How far from the mouth of Slick Rock Creek?

A. I don't know exactly, it must have been fifteen or eighteen miles.

Q. You have always lived, as you have explained, in the neighborhood of Slick Rock and that territory?

A. Yes, sir.

Q. Have you ever been on Slick Rock?

A. Yes, sir, I have been there often, but only at the mouth of the creek where the trail crosses, going backward and forward from Tennessee. My father used to herd cattle in there, and I helped him herd cattle in Tennessee.

Q. Your father is dead?

A. Yes, sir.

Q. Did you ever hear him say anything about where the state line ran?

A. Yes, sir, I have heard him say many a time that the line ran

up Slick Rock Creek, near the mouth of Slick Rock, and he said it ran to the Stack, but I never heard him say how he knew.

318 Q. He told you that was the way the line ran?

A. Yes, sir.

Q. When you use the word "Stack" or "Big Stack" do you mean Big Fodder Stack?

A. Yes, sir. That is the way he told me it ran, with the heights and tops to the top of Unicoy Mountain and from there to Hiawassee River and from there to the Georgia line. Every body that I ever heard speak about it until within the last few years said that the line was up Slick Rock Creek.

Q. Can you recollect the names of any other persons that you have heard speak of it?

A. I can't particularly call any names, but everybody that lived around there said that was the state line.

Q. Did you ever hear prior to 10 or 15 years ago the question of where the state line was denied or controverted?

A. I never heard of it being denied till the last few years. I never heard any body claim that it was anywhere except up Slick Rock Creek.

Q. You never heard any body in Tennessee or North Carolina claim differently?

A. No, sir.

Q. Were you ever along the line yourself?

A. I have never been around the line, but I have been in a few hundred yards of it. My father entered some land there, and he took me there and showed me the place where they found a mine on Slick Rock Creek, a little below where the trail crosses to go into North Carolina.

Q. Was that the Tellassee Trail?

A. Yes, sir.

Q. Where did your father make that entry?

A. In North Carolina.

Q. In North Carolina, in the Entry Taker's Office?

A. Yes, sir.

Q. Did he then live in North Carolina?

A. No, sir, he lived on the Tennessee river.

Q. Do you know in whose name he made the entry?

319 A. No, sir. I don't. It has been a long time ago.

Q. But the fact is, that he lived in Tennessee and went over there in North Carolina and entered some land?

A. Yes, sir, or had it entered.

Q. A tract of land on the North Carolina side of Slick Rock Creek?

A. Yes, sir.

Q. Did the tract run down to Slick Rock Creek?

A. Yes, sir, it ran down to the creek.

Q. Do you know whether he ever took out a grant or let it drop?

A. He let it drop.

Q. He never perfected it?

A. No, sir.

The respondent excepts to the testimony of the witness in so far as it details the declarations of his father as to the location of the state line.

Cross-examination, subject to the foregoing exceptions.

T. E. H. McCroskey, Esq.

Q. Are you a brother of William Williams, whose deposition has just been taken?

A. Yes, sir.

Q. If I understand you, your father told you that the line ran up Slick Rock Creek till it passed Little Slick Rock?

A. Yes, sir, and took the ridge to Big Stack.

Q. Did it take the ridge before or after crossing Little Slick Rock?

A. I don't know. It was somewhere in there.

Q. You know where Little Slick Rock is?

A. Yes, sir.

Q. Little Slick Rock is two miles above the mouth of the river?

A. Yes, sir, something like that.

Q. Have you ever followed that ridge from the mouth up?

A. No, sir.

Q. You don't know where the line runs there?

A. Only what people have told me.

Q. You don't know where that ridge leads to?

320 A. No, sir, only people have told me that it leads to the Big Stack.

Q. Your father told you that it was the ridge near the mouth of Slick Rock Creek?

A. Yes, sir.

Q. Were you ever there and saw the foot of that ridge?

A. I have seen it many a time, but never noticed it? It wasn't pester-n- me in noway.

Q. You and your father saw it at the place where it left the creek?

A. Yes, sir. He never allowed his cattle to cross the creek. He was in there with me several times where the trail crosses.

Q. He told you where the ridge left the creek near the mouth of Little Slick Rock Creek?

A. Yes, sir.

JAMES WILLIAMS,
By EDMUND B. NORVELL,
Notary Public & Commissioner.

321 W. P. Taylor, a witness of lawful age, after being first duly sworn, was called on behalf of the plaintiff and testified as follows:

Examined by Theodore F. Davidson, Esq.:

Q. What is your age?

A. Going on 83.

Q. Where do you live?

A. I live now in Oklahoma.

Q. Did you ever live in North Carolina?

A. I was raised on Valley River in Cherokee County, North Carolina.

Q. How long did you live there before you moved to Oklahoma?

A. I went to Oklahoma in 1892.

Q. You have lived in Oklahoma since?

A. Yes, sir.

Q. Where did you live beside on Valley river while you were in North Carolina?

A. In 1890 I went down on the Tennessee River and lived there until 1892.

Q. Whereabouts on the Tennessee River?

A. In Monroe County. I lived in Monroe County a year and a half before I went West.

Q. Did you know a man by the name of Thomas C. Tatham?

A. Yes, sir. I knew him well.

Q. Where is he?

A. He is dead.

Q. How long has he been dead?

A. He died in the 50's somewhere.

Q. How far did you live from his house?

A. About two miles.

Q. Did you ever hear a conversation between Tatham and any body else in relation to the State line between Tennessee and North Carolina where it crosses the Tennessee River?

A. Yes, sir.

322 Q. When was that?

A. In '49 or '50 somewhere.

Q. What were the circumstances giving rise to that conversation?

A. Mr. Morris had got a way-bill from an Indian that was living there and he wanted to know where the line was, and Mr. Tatham was with the Commissioners at the time they run the line, and he told him how the line run up Slick Rock Creek.

Q. What Morris was that?

A. Gideon F. Morris.

Q. Where did Tatham say the line was?

A. He said it run off of Smoky Mountain down opposite the mouth of Slick Rock Creek; and he said that they had to go down the river to ford it, and they forded it at the first ford and come back up the river to the mouth of Slick Rock Creek, over the old trail, to the mouth of Slick Rock Creek, and then went up the creek.

Q. Did he say what the name of the old trail was?

A. I think he said it was Tellassee Trail.

Q. Then what did they do when they got back to the mouth of the creek,—Slick Rock Creek?

A. They started there and run up the creek till they got up above the forks and there they took the ridge that leads to the top of Big Fodder Stack.

Q. Who was it that ran the line in that way, did he say?

A. The Tennessee fellows that had been appointed. I can't recollect the parties who was with him.

Q. How did Tatham say he knew about it?

A. He was with them all the way around, helping them survey the line, at least he give that to Mr. Morris and me.

Q. Did you ever hear any body else say where the state line was in that vicinity?

A. Yes, sir, they all claimed that to be the line.

Q. Who else can you remember hearing say that the line ran up Slick Creek?

A. Andy Colvard.

323 Q. Where is he?

A. He is dead.

Q. When did he tell you that?

A. Somewhere in the 50's.

Q. Where did he live?

A. In Graham County, North Carolina.

Q. Who else in North Carolina did you ever hear say that the state line ran up Slick Rock Creek?

A. I can't recollect all of them.

Q. Did you ever hear any body who lived in Tennessee say where the state line was at that place?

A. Yes, sir, I have heard the old man Upton.

Q. Where did he live?

A. Close to Madisonville.

Q. Where is he?

A. He is dead.

Q. Where did Upton say the state line was?

A. He said the line ran up Slick Rock Creek.

Q. Who else did you ever hear say the line went up Slick Rock Creek?

A. Mike Harrisson and Bill Harrisson.

Q. Where are they?

A. I don't know whether they are living or dead.

Q. Where did they say the line ran?

A. Right up Slick Rock Creek.

Q. How long has it been since you heard them make those statements?

A. It was back in 1876.

Q. Do you remember the names of any other Tennesseeans whom you have heard say the line ran up Slick Rock Creek?

A. There is a whole lot of them down there, but I can't remember their names.

Q. Do you know the general reputation in North Carolina and Tennessee as to where the line was?

A. I never heard it doubted till I come back here and heard about this dispute.

324 Q. When did you come back here?

A. In 1892 when I left here there was no dispute about it then.

Q. You knew the general reputation as to where the line was located before you went to Oklahoma?

A. Yes, sir.

Q. Where did that reputation locate the line?

A. It went up Slick Rock Creek to Little Slick Rock and up the ridge to the top of Big Fodder Stack Mountain.

Q. Did you ever form the acquaintance of an Indian named Ropetwister?

A. Yes, sir; I have seen him many a time.

Q. When did you first know him?

A. I saw him in 1835, when I was a little boy.

Q. How did you come to see him then?

A. When they made that treaty here in 1835, Ropetwister was a big stout Indian.

Q. What impressed Ropetwister on your memory at that time?

A. He lived on Cheoah River then.

Q. Did he do any thing at that time?

A. He was a ball player.

Q. Was he a good ball player or otherwise?

A. Cheoahtown and Valley River Town played ball here that day and Ropetwister was one of the best ball players they had. They played ball after they signed the treaty.

Q. You say they played ball after they signed the treaty. Was it on the same occasion?

A. Yes, sir.

Q. Going back to the declaration about the State line, did you ever hear James Taylor say anything about where it was?

A. Yes, sir.

Q. Who was James Taylor?

A. My brother.

Q. Where is he?

A. He is dead.

Q. Where did he say it ran?

325 A. He said it ran right up that creek.

Q. The place you have mentioned?

A. Yes, sir.

Q. You spoke of some people in North Carolina stating where the State line ran, did you ever know J. W. C. Piercy?

A. Yes sir, he was a surveyor.

Q. Did you ever hear him say anything about it?

A. Yes, sir. He surveyed that Slick Rock line for brother Jim and the old man Morris.

Q. When was that?

A. In 1853.

Q. Do you remember hearing Gideon Morris say anything about the State line?

A. Yes, sir. Gideon Morris said that he had located a mine there and had his entry. He took his survey for the mine on this side on the North Carolina side.

Q. Where is Gideon Morris?

A. He went West and died.

Q. How long ago?
A. He went somewhere in the 70's.
Q. Coming back to Thomas C. Tatham. What sort of a man was he in point of intelligence and prominence in the community?
A. He was an intelligent, good old fellow.
Q. Was he a leading or a common citizen?
A. He was above the common.
Q. What was his reputation for honesty?
A. Good. His word was as good as gold.

(Respondents except to the foregoing testimony of the witness in so far as he undertakes to detail the declaration of Piercy, Taylor, Upton, Harrison and others, because the same is incompetent, being purely hearsay).

Cross-examination.

By T. E. H. McCROSKEY:

Q. Have you ever been on Slick Rock Creek yourself?
326 A. I was there one time hunting.
Q. What part of the creek were you on?
A. Between Tellassee Creek and Slick Rock Creek.
Q. You were on the Tennessee side?
A. Yes, sir.
Q. Do you know where the mouth of Slick Rock Creek is?
A. I don't recollect.
Q. You don't know anything about the ridges in there?
A. No, sir. All I know is from information.

Court adjourned until 2.30.

W. P. TAYLOR.
By EDMUND B. NORVELL.
Notary Public and Commissioner.

2.30 P. M., Court reconvened.

Attorneys present, representing plaintiff:
Theodore F. Davidson, Esquire; F. A. Sondley, Esquire; C. B. Matthews, Esquire; Duff Merrick, Esquire, and W. Morris Harrison, Esquire.
Attorneys present, representing defendant:
T. E. H. McCroskey, Esquire, and John Franklin Shields, Esquire.

327 V. E. GRANT, a witness of lawful age, being first duly sworn, was introduced on behalf of the plaintiff, and testified as follows:

Examined by F. A. SONDLEY, Esquire:

Q. What is your name?
A. V. E. Grant.
Q. Where do you live?

A. In Monroe County, Tennessee.

Q. What is your age?

A. I am fifty-two years old.

Q. What is your occupation?

A. I do several things. I'm a farmer for one.

Q. Have you ever held any position of a public character in Tennessee?

A. Yes, sir.

Q. What?

A. I have been Justice of the Peace for twelve or fourteen years Post Master for seventeen years, and was in the Lower House of the Legislature ten years ago for Monroe County, and have been a Notary Public.

Q. Of what State are you a native?

A. North Carolina.

Q. How long did you live in North Carolina before your removal to Tennessee?

A. I lived in North Carolina until about twenty-six years ago.

Q. Did you ever during your residence in either State have any knowledge of that portion of the country where Slick Rock Creek enters the Tennessee river?

A. I know where it is.

Q. How far do you now live from that part of the country or from the Mouth of Slick Rock Creek?

A. It is about eight miles, maybe or little more.

Q. Do you know anything of the location of the line between North Carolina and Tennessee in that vicinity from personal knowledge or reputation?

328 A. I have seen a map of the country and have heard a great many people talk about it.

Q. When did you first hear anything said about where that line was before your removal to Tennessee, or afterwards?

A. Before. I lived in Graham County three years and taught school in that county, and I heard old men talk about where the State line was.

Q. Did you know the reputation of that line as to its location when you were in Graham County?

A. Yes, sir. It was said to be Slick Rock Creek.

Q. Can you tell how general that reputation was at that time?

A. I was rather a new man, and I couldn't tell except by hearing old men talk about it.

Q. How general did you hear statements about it?

A. It was agreed pretty much every where, that the State line was up Slick Rock Creek. They all had one point.

Q. Where did that reputation place the State line?

A. Up Slick Rock Creek. Up Big Slick Rock Creek. Some claimed that it passed in Nichols Cove; but it was always claimed to be the creek, or the line up to the Lead going up to Big Fodder Stack. I think it was the Lead, going up to Big Fodder Stack.

Q. Can you give us the names of any individuals whom you have heard make that statement?

A. Jake Shope.
Q. Where is he?
A. He is dead.
Q. When did you first hear him make that statement?
A. Twenty-six or twenty-seven years ago.
Q. Who else can you call the names of?
A. The old man Frank Schuler, who lived on the Creek at that time.
Q. Where is he?
A. He is dead.
Q. In what State did Shope and Schuler live?
A. In North Carolina.

Q. After you moved to Tennessee did you ever hear any
329 reputation on that subject?
A. Yes, sir.

Q. How general was that?
A. There was a difference of opinion a little more. You would hear some now and then claim that the State line was up the ridge South of the Creek, but most generally the old men I heard talk about it said the creek was the line just like the North Carolina people.
Q. South of what creek was it said to be.
A. That is the ridge on the South side of the Creek. It is a quarter or a half a mile beyond the south side of the creek.
Q. You say some few claim that the line was there?
A. I have heard one or two.
Q. Whom have you heard say that the line was up Slick Rock creek the way it went up the Lead to Big Fodder Stack, in Tennessee?
A. I remember several down in that part of the country old men.
Q. Mention some of them, please sir?
A. I remember having talked with old Mike Harrison who lived near Chilhowie?
Q. Where is he?
A. He is dead.
Q. How long has it been since you heard that statement of his?
A. It was a while before he died. When I first went to Tennessee I didn't know that we were kin-folks. I visited him frequently and was there when he died. He told me about having some lands in North Carolina. He died fourteen or fifteen years ago, the 15th of this July. I asked him where the State line was, and he told me that it went up Slick Rock Creek, about five miles and a half to the Lead that goes up to Fodder Stack. He said his line joined that on the North Carolina side.
Q. Do you remember any body else making that statement in Tennessee or a similar statement?
A. I heard Jack Miligan say the line ran up Slick Rock Creek.
Q. Where did he live?
A. He lived on Tellassee Creek.
330 Q. Where is he?
A. He is dead.

Q. How long has he been dead?

A. Twelve or fourteen years.

Q. Where did Jack Miligan claim the line was run?

A. He claimed it just like the others. Up Slick Rock Creek to Big Fodder Stack.

Q. Do you remember any one else in Tennessee who mentioned that report or understanding to you?

A. I have heard my father-in-law speak about it. He is seventy-seven or seventy-eight years old.

Q. What is his name?

A. James Anderson.

Q. Where did he say it was?

A. I heard him speak about it last Sunday morning. He said it was up Slick Rock Creek.

Q. Did you ever hear any other Tennesseeans speak about it?

A. I don't remember.

Q. Do you know a man by the name of Jason Culberson?

A. Yes, sir; he is eighty-six years old.

Q. Did he say anything about it?

A. Yes, sir; Jason Culberson was a man who knew the country well, and he claimed that the line went up Slick Rock Creek.

Q. Where is Jason Culberson?

A. He has been dead twelve years.

Q. You say that you heard the reputation from some that the line was on a ridge south of Slick Rock Creek. When did you first hear any such statement as that?

A. I don't remember.

Q. Was it before this dispute begun or since?

A. I think it was probably since. I think I heard one express himself since then.

Q. Did you ever see any trees blocked, or blocks that came from trees, purporting to be State line trees?

331 A. Yes, sir.

Q. Where did you see them?

A. At my house.

Q. You say they were blocks from State line trees?

A. Yes, sir.

Q. Who had them?

A. I can't remember. I think it was W. T. Hale, a surveyor. I think another man took them away from there. They were left there by some man, I don't remember who, and it strikes me that a man by the name of Henry M. Ditmore took them away.

Q. How long ago has that been?

A. I can't remember.

Q. Where did the blocks purport to come from?

A. Ditmore said they come from Slick Rock Creek.

Q. Where is Henry M. Ditmore?

A. He has been dead about three or four weeks.

Q. I understand you to say they purported to be State line blocks?

A. That was my information.

Q. How many blocks were there?

A. A whole bunch of them. They had them in a sack.

(Respondents except to the testimony of the witness in so far as he undertakes to testify as to reputation, and also in so far as he undertakes to detail statements or declarations of other parties as to the location of the State line. Respondents also except to the testimony in regard to the blocks which he claims were brought to his house, because said testimony is incompetent).

Cross-examination, subject to the foregoing exceptions.

By T. E. H. McCroskey, Esq.:

Q. I understand you to say that there was a difference of opinion as to the location of the State line by parties in Tennessee, but you didn't give the names of any Tennesseeans who claimed the
332 line was South of Slick Rock Creek. Will you please give me the names of the men whom you have heard claim that the line was south of Slick Rock Creek?

A. Boyd McMurray was one of them.

Q. Who else?

A. One of them that I have reference to lived in North Carolina at that time. Isaac Carrington. I remember I was talking with him one time when we were going across the Smoky Mountains when he mentioned it.

Q. The ridge you speak of south of Slick Rock Creek is Hangover ridge?

A. Yes, sir; I think so.

Q. That is the main ridge, immediately south of the creek?

A. Yes, sir. Well, it is broken up by gaps. I would hardly take it to be a ridge. It is broken up so badly that they claim it to be a lead.

Q. They claim it to be Hangover Lead?

A. Yes, sir.

Q. Do you know Boyd McMurray well?

A. Yes, sir; I have known him twenty years.

Q. How far do you live from him?

A. About three miles.

Q. He was living there when you moved to Tennessee?

A. Yes, sir.

Q. And had been living there long before that?

A. Yes, sir.

Q. He is an old man now?

A. Yes, sir; he is eighty-four years old.

Q. You stated that Uncle Jack Miligan told you that the State line run up Slick Rock Creek?

A. Yes, sir; I am sure about that. He was a brother in law of Mike Harrison, and he was in the Indian Wars, and he would come up to my office and I would fix up his pension for him. I asked him where he claimed the State line was, and he told me that Mike Harrison had some land running along the Big Fodder Stack Lead, which is close to Harrison Cove.

Q. Boyd McMurray is a man of integrity is he not?

A. Yes, sir; he is one of the very best men in Monroe County, as I know.

333 Q. He has been familiar with that country for some years.

A. I don't know about that. I don't know anything about the other side.

Q. If he said that he had herded cattle on Slick Rock Creek, you would believe it?

A. Yes, sir.

Q. If he testified to that in any law suit you would believe that, too?

A. Yes, sir; I would not have a bit of doubt as to his veracity.

Q. If he said that he had been familiar thirty years or longer before his deposition was taken, you would believe it?

A. Yes, sir. I have been in Tennessee twenty six years, but not where I now live. I lived in Blount County, across the river ever since I have been there.

Q. If Boyd McMurray had testified in a suit that Uncle Jack Miligan had gone with him across Slick Rock Creek, and up Hangover Lead to the top of it, and had said that was the State line between North Carolina and Tennessee, you would believe Boyd McMurray's statement in regard to that?

(Plaintiff objects to the foregoing question because there is nothing in this case upon which to base such an assumption.)

A. Yes, sir; I would have to believe it, because he is a man known for his honesty.

Redirect examination.

By F. A. SONDLEY, Esq.:

Q. How far does Boyd McMurray live from Slick Rock Creek?

A. He lives three miles below me, and it is seven or eight miles from my house to Slick Rock Creek.

Q. What was the character of Jack Miligan?

A. He was quite a prominent man in the country.

Q. What was his reputation for truth and integrity?

A. It was good as any body's, just as far as I know, for years and years.

Q. If Jack Miligan had said the State line was up Slick Rock Creek, what credit would you give to that statement?

A. As much as I would to Uncle Boyd McMurray's.

334 Q. Jack Miligan told you that that is where the State line was?

A. Yes, sir.

Q. What is Boyd McMurray's business?

A. He is a farmer. One of the best in the county.

Q. When Boyd McMurray takes an interest in a subject he becomes pretty violent in regard to his view?

A. Yes, sir, he does.

Q. He is not impartial at all when he is interested in a matter?

A. I would take him to be impartial.

Q. Those people who herded cattle, do you know anything about how they treated the State line, or formerly did in years gone by, before this controversy sprung up?

A. When I was in Tennessee the people of North Carolina said that we had no right upon Slick Rock Creek. When my cattle crossed Slick Rock Creek they notified me, and I had to go and get them and take them back across the creek. It was the law then, and may be now, that a non-resident had no right to herd cattle in North Carolina, and I had to come to Graham county and adjust the matter.

Q. Would you have taken the cattle back if you had thought they were in Tennessee?

A. No, sir. I had to get privilege to take them over there after that.

Q. Did you know anything about a man named John Deputy and his actions in regard to the State line?

A. No, sir; not very much. I knew the old man well.

Q. Where did he live?

A. On Slick Rock Creek.

Q. Which side?

A. On the North Carolina side.

Q. Where did he claim to live. In which state?

A. I think he claimed to live in North Carolina.

Q. When you were in politics, did you keep up pretty well with the voters of your county?

A. Yes, sir.

Q. Where was John Deputy living then?

335 A. I think he was dead at that time; when I was actively in politics. He has been dead eight or ten years, and I have not been in politics much since that time.

Q. Did Deputy ever vote in your county that you know of while he was living in North Carolina?

A. No, sir; I think not.

Q. Would you have known it if he had?

A. He would have voted at our precinct.

Q. How would he have gotten to the precinct. Would he have passed by near where you live?

A. He would have passed right by *by* place.

V. E. GRANT,
By EDMUND B. NORVELL,
Notary Public & Commissioner.

336 E. W. HARRISON, a witness of lawful age, being first duly sworn, testified as follows:

Examined by F. A. SONDLEY, Esq.:

Q. What is your name?

A. E. W. Harrison.

Q. Where do you live?

A. In Monroe County, Tennessee.

Q. How long have you lived there?
A. Fifty six years.
Q. How old are you?
A. Fifty six years old.
Q. How far do you live from Slick Rock creek?
A. I suppose it is something like thirty miles now.
Q. Did you ever live near that point?
A. Yes, sir. I was raised about nine miles from Slick Rock. I have lived closer than that. I was raised about nine or ten miles from that place, but I have lived within four miles of the place.
Q. What is your business?
A. I am a farmer now.
Q. Who was your father?
A. Mike Harrison. Did you mean the mouth of Tellassee Creek a while ago?
Q. No, sir; the mouth of Slick Rock creek?
A. I expect it was six or eight miles from where I lived to the mouth of Slick Rock creek. I don't know the distance exactly.
Q. Did you ever hear any conversation between your father and anyone else in regard to the location of the state line in the vicinity of Slick Rock creek?
A. Yes, sir; I have heard it talked of very often.
Q. When was those conversations?
A. It was long about sixty eight, I reckon.—From sixty six to seventy, the general talk was about the state line.
Q. Where did your father say the State line was?
337 A. He generally talked that it run up Slick Rock creek a certain distance, four or six miles, and then turned to the right up towards Fodder Stack.
Q. Is that Big Fodder Stack?
A. I suppose so.
Q. Where did your father say it was?
A. That was his opinion. That was the general opinion.
Q. Where is your father?
A. He has been dead fourteen years.
Q. Did you ever hear anybody besides your father say where that line was?
A. Yes, sir.
Q. Who?
A. I have heard a good many talk about it. In the country generally, there was a good deal of talk about it.
Q. What was the general reputation, as to where the state line was located?
A. It was the general opinion that it run up Slick Rock creek and then to Fodder Stack.
Q. Can you give us the names of any specific persons whom you have heard mention that?
A. Col. Miligan and Jack Miligan.
Q. Where did you hear Jack Miligan talk about it?
A. I think it was at my father's house.
Q. When was that?

A. About 1868.

Q. Where did Col. Jack Miligan say it was?

A. He said it ran to Slick Rock creek and then turned to the right.

Q. Did you ever hear any one else whose name you now remember say anything about it?

A. I heard Elbert De Lashmet.

Q. Where is he?

A. I don't know where he is now. He lived there at that time.

Q. Where did he say it was?

338 A. He said it went up Slick Rock creek.

Q. Can you think of any other persons whom you have heard talk about the state line?

A. My people generally thought it was there. I had several uncles who thought the line was there.

Q. Who were they?

A. John Harrison, William Harrison and Bob Belew.

Q. Can you think of any other names?

A. Not now.

Q. Did you ever hear Thomas Calloway say anything in regard to it?

A. No, sir; I don't think I have. Our people entered some land in there, some where or other, up above little Slick Rock creek, and they sent John Harrison to Tom Calloway to find out where the line ran and he came back and said that Tom Calloway said he was along when the line was run, and they went up Slick Rock creek.

Q. You have mentioned Mike Harrison, John Harrison, William Harrison, Robert Belew Jack Milligan and Colonel Miligan, Elbert De Lashmut; where did those people all live; in what State?

A. Tennessee.

Q. How far did they live from the mouth of Slick Rock Creek then?

A. The Miligans lived pretty close. They lived about Telassee Ford. I don't know exactly how far that is from the mouth of the creek.

Q. You have told us at what time you heard Mike Harrison make those statements. When did you hear the other statements?

A. I heard them all about the same time.

Q. There was an excitement in that neighborhood at one time, wasn't there?

A. Yes, sir.

Q. What was that excitement about?

A. It was a mineral excitement.

Q. How familiar were those gentlemen, whose names you have mentioned, with this portion of the country along and around Slick Rock creek?

A. They were very familiar with it. They went there often.

Q. What did they go there for?

339 A. On mineral business and hunting. Perhaps my father more than any of them had camped out there; I don't remember.

Q. Were they hunting men, or very old men?
A. They were middle aged men; some of them were pretty old.
Q. Where are they now?
A. So far as I know they are all dead.

(Respondents except to the testimony of the witness so far as he details the declarations of the various parties mentioned in regard to the state line, because the same is purely hearsay, and incompetent.)

E. W. HARRISON.
By EDMUND B. NORVELL,
Notary Public & Commissioner.

No Cross-examination.

340 O. P. WILLIAMS, a witness of lawful age, being first duly sworn, testified as follows:

Examined by THEODORE F. DAVIDSON, Esq.:

Q. What is your name?
A. O. P. Williams.
Q. Where do you live?
A. Bryson City, Swain County, North Carolina.
Q. What is your age?
A. Fifty one.
Q. Are you familiar with this country involved in this controversy, now under investigation in regard to the state line between the Tennessee river and the Hiawassee River?
A. Yes, sir, I am: from the Tennessee River some distance; but I am not acquainted with the country over toward the Hiawassee River.
Q. Did you know one H. P. Hyde, formerly a citizen of Graham County?
A. Yes, sir.
Q. Where is he now?
A. He was in Oklahoma, the last I heard of him.
Q. What was his occupation?
A. He was a surveyor.
Q. If you know, state what his reputation was as surveyor, and as to his character?
A. He was a man of good character and was a surveyor of experience. He was considered a good surveyor.
Q. Do you know whether or not he was, at one time, one of the commissioners appointed by the State of North Carolina to run the line between the State of North Carolina and Tennessee?
A. Yes, sir, in 1897, he and Mr. Lovingood, County Surveyor of Cherokee County were appointed to run the line.
Q. Do you know whether or not he ran the line?
A. They ran it about twenty five miles.
Q. How do you know that?
A. I was with them.
341 Q. In what capacity?
A. Chain bearer.

Q. Where did they begin the line?

A. I was not with them the first day. I got with them on the following day, and they said they commenced at the mouth of Slick Rock Creek, and ran up the Tellassee trail for something like two miles; and I commenced the survey where the trail crosses the creek.

Q. How far did you continue that survey?

A. Twenty five miles from Slick Rock Creek.

Q. Where did that point take you to?

A. To Beaver Dam Bald.

Q. West of the Tellico River?

A. Yes, sir.

Q. Did you have any opportunity, and if so, did you use it, to observe trees marked along there?

A. Yes, sir, I observed a good many marked trees.

Q. State, generally, the line that the commissioners ran while you were with them?

A. Part of the distance was nearly south but the general course was southwest.

Q. When you began with them at the Tellassee trail, how did they run the line?

A. Up the creek.

Q. How far up the creek?

A. According to the measured distance, from the river to where they left the creek, was a little over five miles.

Q. When you left the creek where did you run?

A. Up the ridge to Big Fodder Stack to the left hand edge of the stack.

Q. Then how did you run?

A. They ran the divides between Slick Rock creek and Citico Creek out to Stratton Bald, and struck the divides there and ran out toward the Bob Stratton Meadows.

Q. Then how did you run?

342 A. They ran on around the divides out to Hawe Knob Laurel Top, and from Laurel top they turned down the state ridge and ran across the Tellico river, and ran up by a noted Holly tree to the main divide, and kept that divide to Beaver Dam Bald till we quit.

Q. Was your attention called to any marked trees, or any other marks, claimed to be state line marks, anywhere along that line. If so describe them?

A. There were some marked trees up Slick Rock creek. I don't know just how many. One birch and probably one maple, which they claimed resembled the marks on the state line; but it was a little difficult to count the growth on the trees, owing to the nature of the trees.

Q. Were any of the trees blocked?

A. They blocked a few of them. Where we left Slick Rock creek, near the creek we found a spruce pine or hemlock that had marks resembling the marks on the state line, and we blocked that spruce pine and counted the growth.

Q. With what result?

A. The growths indicated that the state line had been run there in 1821, 76 years before.

Q. What became of that block?

A. I think they preserved it. We found another spruce pine in that place and cut that down and split it, in order to get above the three hacks in it.

Q. How did that splitting correspond with the other?

A. It was about the same as the other.

Q. As you ascend the mountain, was your attention called to any other marked trees?

A. Yes, sir. There was a hemlock on the Big Stack. I don't remember whether we blocked that or not.

Q. When you got down to the state ridge, do you remember seeing or having your attention called to any marks, and if so how many?

A. Yes, sir. We found some marks there, and one large chestnut we blocked, something like six inches; and that tallied with the time the state line was run.

343 Q. You spoke of a noted Holly tree, what gave it its notoriety?

A. We heard of it, and it was supposed to be one of the line trees on the other side of Tellico river.

Q. Did it have any figures or letters on it?

A. Yes, sir, it had some, but I don't remember what kind they were.

Q. Those marks along the line that you observed, please describe their appearance and the character of the mark?

A. They were what they called fore-and-aft trees, two hacks just above a blaze, and a line tree with three hacks on the side by the same axe.

Q. What appearance did they have with respect to having been made at the same time and with the same instrument?

A. They seemed to have been marked with the same axe about the same distance from the ground; all about the same time.

Q. What was their appearance with respect to their age?

A. Some times you could see the marks very distinctly, and other times you could not see them at all, owing to the nature of the tree, excepting places where they were protected from the weather.

Q. Did they appear to be recent marks?

A. No, sir; they appeared to be very old marks.

Q. Mr. Williams, will you please state what positions of a public nature you have held in your county of trust or confidence and responsibility?

A. I was Clerk of the Superior Court in Graham County one term, and served one term in the Legislature of North Carolina. Nearly six years ago I was elected Clerk of the Superior Court of Swain County, and I am holding that position now.

Q. Do you know whether Lovingood and Hyde made any new marks, or whether they just traced the line?

A. I really think they just traced the line. I am not sure whether they made any new marks or not.

Q. In what year was that?

A. In May, 1897.

Q. Could you tell from the appearance of the trees whether or not some of the trees had been blocked along this same line which is in controversy?

344 A. Yes, sir.

Q. So, some one else had been along there before you?

A. Yes, sir; and we also found some marks where there had been a trail there, a part of the way, where it looked like some one had been hacking promise-ously. They looked like hacks, but in truth they were land-marks. I remember one tree I found looked very much like state line marks, and yet when we tested it, it was only twenty four years old, and didn't correspond with the other trees as to age.

Q. How many trees do you remember to have seen along the way you have described?

A. I cannot state that, or just where they were.

Cross-examination.

By T. E. H. McCroskey, Esq.:

Q. At the time this survey was made in May 1897, a law suit was then pending in the United States Court at Knoxville, with Charles Hebart on one side and the Beldings on the other, Hebert claiming the lands under Tennessee, and Belding claiming the land under North Carolina?

A. I don't remember just when that suit was pending. I remember hearing something about the suit after that.

Q. Don't you know that Mr. Hyatt was a witness in that law suit?

A. I understand that he was.

Q. His deposition was taken just a few days after that survey was completed?

A. I don't know just how long. I understand it was afterwards.

Q. Are you pretty familiar with that country?

A. Yes, sir; I am, from the Slick Rock back to Stratton Bald, beyond that point, I am not.

Q. Are you familiar with the Fodder Stack Lead?

A. Yes, sir, I have been over it a good many times. Also the Hangover Lead.

Q. Beginning at the junction where the Hangover begins, and going north toward Fodder Stack, and following on, can you describe the ridge running on to where it terminates?

345 A. Commencing where?

Q. Begin with the junction and follow the ridge in its various courses; can you follow the ridge to where it terminates?

A. If you commence at the Little Tennessee River, you have to go in a southerly direction to Hangover.

Q. Go back up to where they come together?

A. The ridge or mountain from Hangover, where it intersects with the ridge from Fodder Stack?

Q. Yes, begin there and run toward Fodder Stack, north.

A. The Hangover ridge, and the ridge coming from Fodder Stack, come together at Stratton Bald.

Q. Follow the Fodder Stack Lead from Stratton Bald?

A. Then you come nearly north out at the place called Rock Stack out to Big Stack and Little Stack. Out near Little Stack the mountain prongs, one prong going toward Citico, known as Salt Spring Mountain, and then runs on from Citico creek into Monroe County; and the other comes around toward Little Slick Rock creek, and another ridge runs into Tennessee River, below the mouth of Slick Rock creek.

Q. From little Fodder Stack, going to Tennessee River, the country is broken up into several ridges?

A. Yes, sir.

Q. Which is the main ridge from there to the Tennessee River?

A. There is but little difference. It would be a very hard matter to say which is the main ridge, because the ridge coming in at the mouth of Slick Rock creek is a good size ridge, and there is another good size ridge, running toward Rabbit creek.

Q. That projects down to the bank of the creek?

A. Yes, sir.

Q. From Little Fodder Stack you pass over Stiff Knee?

A. Yes, sir.

Q. From Little Fodder Stack down to Stiff Knee, there is a considerable fall?

A. Yes, sir; there is a considerable drop-off.

346 Q. There is probably a thousand feet in that fall, between Telassee and Little Slick Rock?

A. There is not that much; but there is a considerable fall.

Q. Now, going back to Fodder Stack Lead, and going around what is called Salt Spring Mountain—that leads down to Citico Creek?

A. Yes, sir.

Q. About how far—for three or four or five miles down Little Fodder Stack it is quite a prominent ridge, and makes a divide there?

A. Yes, sir.

Q. It is a more prominent part of the Fodder Stack Lead than the one turning to the right and going down Stiff Knee?

A. Yes, sir.

Q. It is really a continuation of the Fodder Stack Lead?

A. It is at least one of the continuations.

Q. One of the continuations of the Fodder Stack Lead?

A. Yes, sir; one of the continuations.

O. P. WILLIAMS.
By EDMUND B. NORVELL.
Notary Public & Commissioner.

347 JASPER L. FAIN, a witness of lawful age, after being first duly sworn, was called on behalf of the plaintiff, and testified as follows:

Examined by BEN POSEY, Esq.

Q. Your name is Jasper L. Fain?
A. Yes, sir.
Q. Where do you live, Mr. Fain?
A. I live in Cherokee County.
Q. In what part of Cherokee County?
A. In Beaver Dam District, in the north part of the county.
Q. How far do you live from Tennessee?
A. About 100 yards from the line.
Q. How long have you lived where you live now?
A. Since March, 1889.
Q. Who did you go there under, if any one?
A. M. Fain, my father.
Q. Who was claiming the land where you lived and which you occupied at that time?
A. No one except my father.
Q. Your father, M. Fain?
A. Yes, sir.
Q. Is your father dead or living?
A. He is dead.
Q. How long has your father been dead?
A. He died in 1893.
Q. Have you lived there continuously ever since your father's death?
A. Yes, sir.
Q. Are you one of his heirs?
A. Yes, sir.
Q. Where did you go from that place to vote?
A. To Unaka.
Q. Is that in North Carolina or Tennessee?
A. It is in Cherokee County, North Carolina.
348 Q. Where have you paid your taxes?
A. In Cherokee County, North Carolina.
Q. Have you ever paid any taxes on that land any where but in North Carolina?
A. No, sir.
Q. Do you know a place in that section of the country called, State Ridge?
A. Yes, sir.
Q. How long have you known it as State Ridge?
A. Ever since I knew anything about the country,—about twenty five years. I was never on it until 1889. I have heard of it all my life.
Q. Are you well acquainted with the country from the point known as Laurel Top to the Unicoy turn-pike road?
A. I am familiar with the country out as far as Beaver Dam Bald, a distance of six or seven miles. I have been over there on the

Unicoy turn-pike once, along the state line a number of times from Beaver Dam Bald to Laurel Top.

Q. Where is Laurel Top with reference to the line between North Carolina and Tennessee?

A. It is something like a half mile north of the county corners.

Q. Is it on the line between North Carolina and Tennessee?

A. Yes, sir.

Q. Going from Laurel Top, and following this State Ridge you speak of, what direction do you travel?

A. In a southwestern direction.

Q. Did you ever travel that State Ridge from Laurel Top, or from where it is known as State Ridge?

A. Yes, sir.

Q. How far did you travel it, I mean to what point?

A. I have been clear along as far as the ridge goes to the Unicoi turn-pike.

Q. Please state whether or not you ever saw any marks on the timber on that ridge, and if so, state what they were?

A. Yes, sir; I have found marks on the timber on the State Ridge.

349 Q. What kind of marks?

A. They were marked with three hacks, and I found one tree that was marked with two hacks and a blaze.

Q. What would that indicate.

A. Fore-and-aft trees.

Q. What would three hacks indicate.

A. The state line, and the state line marks.

Q. On this State Ridge, where did you find those marked trees with reference to Tellico?

A. All the way from the county corner to where it connects with what we call the Jenkins Ridge, that divides Beaver Dam and Tellico, just where two ridges connect.

Q. Did you find any on the southwest side of the Tellico Creek?

A. Yes, sir.

Q. What did you find?

A. A holly marked, "86-M.," a hemlock, a holly and two oaks, and I believe a chestnut.

Q. A hemlock is what is commonly called a spruce pine?

A. Yes, sir.

Q. Did you ever travel the line claimed by the plaintiff in the case of Stevens against Fain and others, which was tried in the United States Circuit Court at Knoxville?

A. Yes, sir.

Q. In traveling that line, state whether or not you found any marks, and if so, what they were?

A. No, sir; I never found any.

Q. State whether or not you looked for state line marks along that line?

A. Yes, sir.

Q. State the character of this ridge, you call the state ridge, as it

leads off from the county corners in the direction of Tellico—I mean as to its being a prominent or a main ridge?

A. It is a main ridge, leading in a southwestern direction, and continues right on until it is cut in two by the river or creek.

350 Q. On the other side, what is it?

A. It makes up over there and continues right on.

Q. In what direction?

A. In a southwestern direction.

Q. To go the line that the plaintiffs in that suit referred to as the state line, and claimed as the state line, what direction would you travel from the county corner?

A. Almost due east, about five miles.

Q. Then, which way would it go?

A. It would turn back south, a little and then on a little ways, it would get back almost southwest, then bear back and turn west, and connect with the state line, then they would be running a little north of west, west any way, I am not sure, but I believe it would be a little north of west.

Q. And would they come back to the state line?

A. Yes, sir.

Q. In starting out around their contention, this last line that you have spoken of, what is the topography of the country that you would travel?

A. You would drop right down off of the mountain about 410 feet; that is, you would drop 410 feet in about 1400 feet.

Q. You say in 1400 feet you would drop down 410 feet?

A. Yes, sir, as well as I remember.

Q. How is it then?

A. You would drop down onto a ridge. There is a ridge all the way around.

Q. Is it broken or how is it?

A. There are high points and low places and ups and downs.

Q. What is the difference in the distance, if you know, in running around that slope you have spoken of on the State Ridge road to the Unicoy road?

A. There is about six and a half miles difference from the county corners.

Q. From where the slope leaves this place around back to where it connects again?

351 A. It is about six miles and a half.

Q. Farther that way?

A. Yes, sir; according to McClellan's survey.

Q. That state line mark that you spoke of, is that one easy for a man to know, if he does know a state line mark?

A. Yes, sir; it was the oldest marks we found anywhere. It looks older than any land marks I have been able to find in the county anywhere.

Q. Have you recently been over that line?

A. Yes, sir; I was over it in May.

Q. Have you pointed out those lines to any one?

A. Yes, sir, Mr. Burns and Capt. Gannett.

Q. Did you ever cut any of those trees you say were marked as state line trees?

A. Yes, sir.

Q. For what purpose?

A. To determine the age of the state line and to see how it was marked.

Q. Did you block them?

A. Yes, sir.

Q. How many and where?

A. I hope take out, I think it was, seven or eight; and I saw Mr. Lovingood and Mr. Hyde—Mr. Lovingood was at that time County Surveyor of Cherokee County—I saw them take out one and I hope take out seven or eight. I hope Mr. Lovingood and Mr. McClellan.

Q. Do you remember about what date you took out some of them?

A. I think it was about 1899.

Q. Did you count the growths on those trees?

A. Yes, sir.

Q. How old did the growths indicate the marks were?

A. They indicated that they were 87 years old.

Q. 87 or 78?

A. 78, I reckon.

Q. When did they indicate that the marks were made at that age?

A. In 1821.

Q. Where were those trees located that you blocked?

352 A. On the state ridge.

Q. On what part of the state ridge?

A. I think we taken out two on the southwest side of the Tellico, and the balance were taken out on the northeast side.

Q. What kind of trees did you block?

A. Hemlock and holly. They blocked a maple about 200 yards on the north side of the river, and then they blocked an oak at Bryson Gap; and they blocked a fore-and-aft poplar between Red Log Gap and Bryson Gap. Then I taken charge of a block that was taken out, I suppose, by Bill Hall, between Red Log Gap and Mall Stick Gap. I have been told that he took it out, I didn't see him. He passed my house one evening, surveying down that ridge, and I found that block the next day setting behind a tree; and I brought it here and used it as evidence.

Q. What was Hall doing there?

A. I can't tell you.

Q. Had you seen that tree before?

A. Yes, sir.

Q. What was it?

A. It was a fore-and-aft state line tree.

Q. You say that you saw Hyde and Lovingood take out some blocks?

A. Yes, sir; I saw them take a block out of a chestnut.

Q. Where was that?

A. Near the Sandy Gap, on the State Ridge.

Q. Did you ever see them take out any others?
A. No, sir.
Q. Were all of those blocks counted that you saw?
A. The one that Lovingood and I taken out, and the one that McLelland and I taken out, we counted.
Q. Did you count the one that Hall had taken out?
A. Yes, sir.
Q. What became of those blocks?
A. They were taken to Knoxville and introduced in evidence and left in the court room at Knoxville.

Q. Did you file them with your deposition?
353 A. Yes, sir.
Q. In what case was that?

A. The case between Stevenson & Fain.
Q. Have you ever seen them since?
A. No, sir.
Q. Did you show all of those blocked trees to Burns and Gannett?
A. Yes, sir.
Q. Do you know where the Unicoy Mountain begins?
A. Yes, sir.
Q. Where does it begin and where does it end?
A. I have never been farther out than the Unicoy road, but I have been out to where it runs to the Hiawassee River where it enters the Tellico River.
Q. Does it run between the Hiawassee River and the Tellico River?
A. Yes, sir.
Q. North of the Tellico, what is the ridge known as, back toward your place?
A. State Ridge.
Q. That is from the river up?
A. That is north of the river.

Cross-examination.

By T. E. H. McCroskey, Esq.:

Q. Mr. Fain, in this case that you spoke of, of Stevenson and others against Fain and others, I understand that Stevenson and others were claiming this same land under grants from the State of Tennessee and you and the other heirs of M. Fain were claiming under the State of North Carolina?
A. Yes, sir.
Q. And that brought up the law suit as to where the state line between Tennessee and North Carolina was located?
A. Yes, sir.

Q. And those surveys were made and those trees examined
354 and blocked to use as evidence in that law suit??
A. Yes, sir.

Q. You were one of the parties in that suit?
A. Yes, sir.
Q. You were interested in the investigation of the matter?
A. Yes, sir.

Q. You went along with the surveyors?

A. No, sir. I spent one day with Mr. McLelland. He come to my cabin and asked me to go along with him and show him where the holly stood. I went around with Mr. McLelland to search for the trees.

Q. Didn't you go with Mr. Lovingood when he was locating the line?

A. No, sir.

Q. Who blocked those trees?

A. Mr. Lovingood and myself; but we didn't do it when he was making that survey, but later. I saw him and Hyde block a tree near the Sandy Gap, at the time they were making the survey.

Q. Lovingood was there twice?

A. Yes, sir.

Q. Were you with him both times?

A. No, sir. He and Hyde taken the block from the chestnut tree near my place. I watched them take it out. They camped near me that night and went on with their survey the next day.

Q. If I understand you, when you speak of Laurel Top, that is a high knob that is located east of what you might call the head of State Ridge?

A. Well, yes, sir; I suppose. I call it—Well, I don't know. It is on the state line. I don't know what you call the State Ridge, unless you call it the head at the county corners.

Q. In running a line southwest, coming from the Tennessee River, you are following the dividing ridge, are you, before you reach what you call the county corners?

A. I don't know. I wasn't along when they run that line along there. I think part of the way you follow the highest ridges.

Q. Have you been out to what is called Stratton Meadows?

355 A. Yes, sir.

Q. Have you been out any further east than that?

A. Yes, sir; I have been out to Stratton Bald.

Q. How far is Stratton Bald from the head or highest point on the State Ridge?

A. I don't know.

Q. About how far?

A. From what point?

Q. From Stratton Bald to the highest point on the State Ridge?

A. I can't tell you.

Q. About how far?

A. I can't tell you.

Q. Is it eight or ten miles?

A. About that far.

Q. In traveling from Stratton Bald to the head or highest point on the State Ridge, are you not following the leading ridge which makes the divide between the waters of Santeetlah, Buffalo and Snow Bird, on one side, and Citico Creek, and the north prong of the head waters of Tellico Creek, on the other?

A. From Stratton Meadows?

Q. From up the Bald?

A. I don't know about Citico. I don't know where it heads up. It divides the north prong of Snow Bird and Santeetlah.

Q. You say at Laurel Top, in going the way the Tennessee parties claimed, you would have a fall of about 400 feet in 1,400 feet?

A. About 410 feet, as I reemmber it, by McClellan's survey.

Q. Did you ever make the measurement?

A. McClellan did.

Q. Did he make the estimate of the amount of the fall, or did you make it?

A. He made it.

Q. You are stating what he said to you?

A. Yes, sir.

356 Q. In approaching Laurel Top, until you reach Laurel Top, coming from Stratton Bald, are you following along the ridge?

A. Yes, sir.

Q. Now, then, after you reach Laurel Top, you say that, in going the way Tennessee claims, you would have a fall of 410 feet in 1,400 feet?

A. At the southwest of Laurel Top a little way.

Q. That is a continuation of the line as Tennessee claims it?

A. Yes, sir; from the county corners.

Q. From there, as I understand you, the line, as claimed by Tennessee, runs east about five miles?

A. Yes, sir.

Q. Are you following the ridge then?

A. Yes, sir.

Q. That ridge going east, and follow around to the head waters of Tellico River?

A. Yes, sir; one prong.

Q. That is, the middle prong of Tellico River?

A. Yes, sir; I believe so.

Q. It goes around to the head of that river?

A. Yes, sir.

Q. And the waters of Tellico run into Tennessee?

A. It goes around that way, if the state line goes the way you claim it.

Q. To be more specific, if the state line is as claimed, going around that ridge, then it would throw all the waters of Tellico River into Tennessee?

A. Yes, sir.

Q. In following that line, then, which would throw all the waters of the Tellico River into Tennessee, from Laurel Top, then, you run east about five miles, following the ridge, and bear more in a southerly or southwesterly course and continue around until you reach what you claim is the state line, at the head of Jenkins Ridge, is that correct?

A. Yes, sir.

Q. And the disputed territory lies between what you claim as the

state line, down the State Ridge and up Jenkins Ridge on one
357 side and around the other ridge taking in the head waters of the Tellico River?

A. Yes, sir; that is the disputed territory.

Q. That is a continuous ridge all around the head waters of Tellico River?

A. Yes, sir.

Q. Following down the course you claim, you would follow down the State Ridge to the Tellico River where the State Ridge diminishes and then you cross the Tellico River and, some little distance on the other side, you would strike the Jenkins Ridge, and follow that up to where it strikes the main ridge, and go on around, is that correct?

A. Yes, sir.

Q. You spoke of the McLelland survey, what do you mean by that?

A. That is the survey that McLelland made.

Q. Under what authority?

A. Under the authority of the State, I believe. That has been my understanding.

Q. The Legislature of North Carolina passed an Act, authorizing McLelland to locate that line?

A. He was ordered by the Governor. I can't say about the legislation in regard to it.

Q. What year was that?

A. I don't remember.

Q. Was it before or after Lovingood was there?

A. Before.

Q. It was prior to 1897?

A. Yes, sir.

Q. About how long before that?

A. A year or two, perhaps longer.

Q. Were you along with McLelland all the way through on the entire survey?

A. No, sir.

Q. How far did you go with him?

A. I was with him from the Beaver Dam place to my place, about five or six miles.

358 Q. As I understand, in making his survey, he began in the southwest and went northeast toward Slick Rock Creek?

A. Yes, sir.

Q. Do you remember the names of the parties who were along with McLelland in making that survey?

A. I remember some of them.

Q. Please give me the names of those you remember?

A. John Aiken.

Q. In what capacity was he working?

A. I don't remember. John Dockery, Hardy Brittain, Will Watson. He is dead now. And A. A. Fain.

Q. I am asking as to those who accompanied Mr. McLelland on the entire survey?

A. I don't remember whether all of them was with him on the entire survey or not. My brother didn't go all the way, I don't think. He was called away before they completed the survey.

Q. Is John Dockery living?

A. Yes, sir; he lives on Owl Creek, in Cherokee County.

Q. What is his post office?

A. Grandview.

Q. Is John Aiken living?

A. He lives in Murphy here. And Hard Brittain lives in Murphy.

Q. Where does McLelland live?

A. He lives here in Murphy.

Redirect examination.

By BEN POSEY, Esq.:

Q. Mr. Fain, you were asked on cross-examination if that is a continuous ridge around the head waters of Tellico where the Tennessee people contend the state line is. What is the character of that ridge as to being broken with high tops and low valleys?

A. It has low gaps and knobs on it all the way around.

Q. Does this ridge you speak of break off immediately from the state ridge, or do you have to make this abrupt descent of 400 feet in the 1,400 feet before you get to the river?

359 A. Yes, sir; you have to drop down there to get off at all.

Q. In going from the county corners, in a southwesterly direction toward Unicoy Mountain, what ground or ridge would you travel on?

A. The State Ridge.

Q. And why is that?

A. Because it leads straight on from Laurel Top and there is no other ridge you could take.

JASPER L. FAIN,
By EDMUND B. NORVELL,
Notary Public and Commissioner.

The further taking of testimony is continued until 2 p. m.

360 A. A. FAIN, a witness of lawful age, after being first duly sworn, was called on behalf of the plaintiff and testified as follows:

Examined by DUFF MERRICK, Esq.:

Q. Mr. Fain, are you familiar with the location of the lands which were in dispute in the case of Stevenson and others against Fain and others, which was tried in the United States Circuit Court for the Eastern District of Tennessee, at Knoxville, Tennessee?

A. I am.

Q. Do you know their location?

A. In a general way I do.

Q. Have you been on them?

A. Yes, sir.
Q. Did you have any interest in that suit?
A. Yes, sir.
Q. You were one of the defendants, were you not?
A. Yes, sir.
Q. How did you and your codefendants derive title to those lands?
A. Through our father. They were entered and granted to him.
Q. What was your father's name?
A. Mercer Fain.
Q. He died intestate?
A. Yes, sir.
Q. You and the other defendants were his heirs?
A. Yes, sir.
Q. How old are you?
A. Forty-three.
Q. Do you occupy any official position, in this State, at this time?
A. I am Clerk of the Superior Court of Cherokee County, North Carolina.
Q. Who paid the taxes on these lands, granted to your father, up to the time of his death, and to what state were they paid?
A. My father paid them to the state of North Carolina.
Q. Who paid the taxes on these lands until the estate sold them?
A. I paid them as administrator.
361 Q. In that disputed territory, to what state is a writ returnable?
A. To the State of North Carolina.
Q. Do you know of any instances in which a process of North Carolina has been issued in that disputed territory?
A. Yes, sir, right on this land, warrants were issued and the officers executed the warrants on this particular territory.
Q. In what case was that?
A. A fellow by the name of Barr and one by the name of Metcalfe, and another, Hale, I believe. Barr was a revenue man and Metcalfe was a civil engineer. Also, Murphy L. Anderson.
Q. Who were these men?
A. Residents of the State of Tennessee.
Q. What were they arrested for?
A. I suppose as trespassers.
Q. Who swore out the warrants for their arrest?
A. I did.
Q. What became of the warrants?
A. The warrants were executed and the people arrested. They were brought to Murphy and went before the judge and were released on writs of *habeas* corpus.
Q. What Judge?
A. Judge Ewart, Judge of the United States Court for the Western District of North Carolina.
Q. Do you know whether or not any people, besides your brother Jasper, live in this disputed territory?
A. Yes, sir, I knew two other families who lived there. He had

a man on the land that he occupied and held possession of by the name of Mitchell; and there was a family by the name of Roberts who lived in there on one tract.

Q. On your father's land?

A. Yes, sir.

Q. Do you know anything about a lease, your father made, for the lands upon which your brother Jasper now lives?

A. Yes, sir, he made a lease to Mr. Hammond.

362 Q. When was that?

A. Back in 1881.

Q. Was that lease in writing?

A. Yes, sir.

Q. Do you know what became of it?

A. No, sir. I had it once and wrote Mr. Hammond about it and he paid me some rents, I think.

Q. Did you collect the rents?

A. I am not sure about that, I think he sent me a little rent.

Q. Do you know whether he remained in possession of or exercised control over the lands up to the time your brother Jasper went there?

A. I don't know.

Q. Didn't he build the house that Jasper lives in?

A. That is what I have understood.

Mr. McCROSKEY: Respondent excepts to the understanding of the witness as incompetent.

Q. You stated that the writs of *habeas* corpus taken out for these defendants in the trespass case in which you swore out the warrants, those warrants were issued by the Federal Court of the Western District of North Carolina, were they not?

A. Yes, sir.

Q. Did the court grant the writs of *habeas* corpus or afterwards refuse to?

A. I forget just what the result was. I don't remember about that. I remember that there was a suit instituted along about that time, and these parties were arrested or made bond.

Q. Don't you remember that the court refused the writs of *habeas* corpus and these parties were put under bond?

A. They were put under bond, is my recollection. They were brought up before some one here. I won't say positive about that. I have not thought of it since. My mind is not clear enough about that to say.

Cross-examination by T. E. H. McCROSKEY, Esq.:

Q. Mr. Fain, these parties that you had arrested were finally discharged under the writs of *habeas* corpus?

363 A. I can't remember just what the proceedings were.

A. A. FAIN.

By EDMUND B. NORVELL,
Notary Public & Commissioner.

364 JOHN DOCKERY, a witness of lawful age, after being first duly sworn, was called on behalf of the plaintiff and testified as follows:

Examined by BEN POSEY, Esq.:

Q. Your name is John Dockery?
A. Yes, sir.
Q. Where do you live?
A. Out here on Hanging Dog.
Q. What county is that?
A. Cherokee County, North Carolina.
Q. How long have you lived there?
A. I have lived there about seventy years. I come there as a little boy and I am now 74.
Q. Do you know the land that was in dispute, between Stevenson and others and Fain and others, in which the state line was involved out there, a few years ago?
A. Yes, sir.
Q. Do you know the general boundary?
A. Yes, sir.
Q. Did you have a tract of land in that territory?
A. Yes, sir.
Q. How long did you own or claim that tract of land?
A. I bought it about the end of the war.
Q. From whom did you buy it?
A. Jonathan McDonald.
Q. What did Jonathan McDonald have for it?
A. He had an entry, and I got a state grant.
Q. To whom was it granted?
A. I had it granted.
Q. Would you know the description of that land if you heard it read?
A. I guess I would.
Q. I am going to read from the State Grant to John Dockery, which grant is registered in Cherokee County, North Carolina, "Begins on a chestnut tree and runs North, 80 west, 120 poles to a spruce pine; thence north, 20 west, 63 poles, to a stake;
365 thence, south, 80 east, 126 poles to a stake; thence south, 20 east, 63 poles, to the beginning." Do you know anything about that tract of land?
A. Yes, sir.
Q. On what waters does that land lie?
A. On the head waters of Tellico.
Q. Is that the same land you had granted?
A. Yes, sir.
Q. To whom have you paid the taxes on that land?
A. I have paid the taxes to Cherokee County, North Carolina.
Q. Have you been called upon to pay taxes by any one else except North Carolina on that land?
A. No, sir; only them.
Q. Do you know where what is known as State Ridge is?

A. I know what they have always called it.
A. How long have you known it?
A. Ever since I was a little boy. I kept cattle in there before the war.
Q. Who were you ever in there with?
A. Old Billy Graves, and old Bill Allen, hunting.
Q. Is that when you first knew it as State Ridge?
A. Yes, sir.
Q. Did they call it the State Ridge?
A. Yes, sir; the old man Graves told me that there was where the State line run across Tellico River.
Q. The old man Graves?
A. Yes, sir.
Q. Is he living or dead?
A. He is dead.

Mr. McCroskey: Respondent excepts to any declaration made by Graves, because the same is hearsay.

Q. Did he say how he knew it was the state line?
A. I think he either told me that he helped run it or packed rations to them while they was running the state line. They both told me that they was along.—Bill Graves and Bill Allen.
366 Q. Is that the same ridge that runs from Laurel Top down to the Tellico River?
A. Yes, sir.
Q. Were you ever along that line at any time?
A. Yes, sir; I have been along the line several times.
Q. Were you hunting for any marks there or looking for any marks?
A. I was along when they ran the line.
Q. Who ran the line?
A. McLelland.
Q. When was that?
A. I don't remember.
Q. State whether or not you saw any marked lines, and what they were, along that ridge?
A. I saw a good many marked lines from the river up and a good many between Unicoy from the river up to the foot, a holly a spruce pine and several others.
Q. Were they old marks?
A. Yes, sir; they called it the State line all the time.
Q. How did you come to go along?
A. I sorty knowed the country. I had been hunting over there, and they summoned me to go with them and help them run it out. I used to keep cattle in there.
Q. Please state whether or not you travelled over the country pointed out to you by Graves and Allen?
A. Yes, sir. That is how they came to summons me, I guess. I had never went the line any further than Laurel Top at that time.
Q. Who else has claimed all the land in that disputed territory, if you know?

A. The Fains had some and one of the Allen boys had some. I believe they sold to Fain.

Q. Do you know where the place is, called the Tipton place?

A. Yes, sir.

Q. Where is that.

A. On the Tellico River.

367 Q. Is that in this disputed territory?

A. Yes, sir.

Q. Do you know who has occupied that?

A. I'll be dogged if I know. Deaver occupied it part of the time.

Q. Who is living there now?

A. I don't know.

Q. If you know, where do they pay their taxes and where do they vote, and so on, from that place?

A. They vote at Beaver Dam District.

Q. Is that in North Carolina?

A. Yes, sir. I suppose it is.

Q. Where do they attend court?

A. In Cherokee County, North Carolina.

Q. Where do they pay the taxes on that property?

A. I guess they pay it here.

Q. Do you know to whom that land was granted?

A. I don't know.

Q. How old a settled place is it?

A. It seems to me that Harshaw had some in there.

Q. How old a place was the Tipton place?

A. Directly after the war I was in there and it was an old field then.

Q. When did you first hear of any dispute about the location of that state line?

A. I never heard nothing about it till Fain and them got up that law suit.

Q. The law suit between Stevenson and Fain?

A. Yes, sir. I was on the train, once, and I heard a lawyer from Tennessee talking about it. He was on the other side.

Cross-examination.

By T. E. H. McCroskey, Esq.:

Q. They had you along as a pilot to show them where the line was?

A. Yes, sir; I helped him run the line.

Q. And you showed him the line?

368 A. I was never down further on the line before. I only knowed what they showed me. I was down there on the river.

Q. What river?

A. The Hiawassee. The turn-pike gate was on the line.

Q. You went to the Hiawassee River and began running back to the east?

A. Yes, sir; we went on to the Tennessee River.

Q. You went all the way through?
A. Yes, sir.
Q. You passed over Laurel Top?
A. Yes, sir.
Q. On by the Stratton Meadows?
A. Yes, sir
Q. To the Stratton Bald?
A. Yes, sir.
Q. Then how did you go?
A. We didn't go down Slick Rock, we went up Fodder Stack.
Q. You went over Big Fodder Stack and up Little Fodder Stack?
A. Yes, sir.
Q. And over the place called Stiff Knee?
A. I don't know what they call it.
Q. You came into Tennessee River below the mouth of Slick Rock Creek?
A. Yes, sir.
Q. How far below the mouth of Slick Rock Creek?
A. It might have been a half mile.
Q. It was some distance up to the mouth of the creek?
A. Yes, sir.
Q. How did you come back?
A. The same way we went, till we got back to where Fain used to live, and then come home.
Q. That survey was made in 1893?
A. Somewhere about that time.
Q. Did McLelland, as surveyor, make any marks or monuments?
A. Yes, sir; he put up mile posts every mile, and cut figures on them. I have got the chisel and hammer that he cut the figures with.

369 Q. Do you remember whether you went on Big Fodder Stack?
A. Yes, sir.
Q. Do you remember passing by Mrs. Crowder's house?
A. Yes, sir.
Q. And beyond Little Fodder Stack?
A. Yes, sir; we went over both Fodder Stacks. We found a marked line right close to Fodder Stack. That is the only line I recollect seeing after we left Bob's Bald. I don't know what mark it was.

JOHN DOCKERY.
By EDMUND B. NORVELL,
Notary Public & Com'r.

The taking of further testimony is continued to 9 a. m., June 23rd, 1910.

370 E. R. HUNSUCKER, a witness of lawful age after being first duly sworn, was called on behalf of the plaintiff and testified as follows:

Examined by BEN POSEY, Esq.:

Q. How old are you?
A. I am eighty-eight.
Q. Where do you live?
A. On Hanging Dog, Cherokee County, North Carolina.
Q. How long have you lived here?
A. Seventy-five or eighty years.
Q. Do you know the country where the state line is said to run between North Carolina and Tennessee from Laurel Top to the Unicoy Road?
A. Yes, sir; I have seen the line along the side of the road marked.
Q. Were you ever on what is known as State Ridge?
A. Yes, sir.
Q. How long have you known State Ridge?
A. Fifty or sixty years. That used to be my sporting grounds, when I was a young man.
Q. What kind of sporting?
A. Hunting.
Q. Were you ever in that country with William Graves?
A. Yes, sir, he was an old neighbor of mine.
Q. State what he ever said to you in regard to the state line being on that State Ridge, if anything?
A. He said it was the line between North Carolina and Tennessee.
Q. How did he say he knew.
A. He said he was along when they surveyed the state line.
Q. Did he show you any marks?
A. Yes, sir; I think he showed me some marks.

Mr. MCCROSKEY: Respondent excepts to the foregoing questions and answers in regard to the declaration of Graves and what he said in regard to the location of the state line, because the same is in every sense incompetent.

Q. How did the line run down the State Ridge,—where did it go to?
370½ A. It went down and crossed the Tellico River.
Q. Where did it go then?
A. It crossed the Tellico River and went up to the ridges.
Q. When you got down to the Tellico River it made up another ridge and up to the Tellico road?
A. Yes, sir.
Q. Did you ever see any marks on that side?
A. I don't remember.
Q. Did he point it out to you as running that way?
A. Yes, sir, he told me how it ran.
Q. Did you see any marked trees between the Tellico River and the State Ridge?
A. Yes, sir, at a place on the State Ridge called Hog Jaw.

Q. Did you know anything about the Tipton place there?
A. Yes, sir.
Q. State what you know about it?
A. There was no settlement there.
Q. Was there a piece of land taken up and settled there called the Tipton place?
A. Yes, sir.
Q. How long ago has that been?
A. Sixty-five or seventy years ago. I owned a piece of land right above it.
Q. Where did the people who owned and claimed those lands pay taxes?
A. Here in North Carolina.
Q. Where did those who lived in that section of the country vote?
A. They voted in this county?
Q. Cherokee County, North Carolina?
A. Yes, sir.
Q. Where did they send their children to school? In Cherokee County?
A. If they sent at all, they sent to school in Cherokee County. I don't think any of them ever sent to school.
Q. In those days, when you spoke of that line being pointed out to you, and the Tipton place being settled, did you
371 hear of any dispute as to where the state line ran?
A. No, sir.
Q. Do you know why that ridge was named State Ridge?
A. It must have been by the division of the different states.
Q. I believe you stated that it has been sixty years or more since you first knew it as State Ridge?
A. Yes, sir.

Cross-examination.

By T. E. H. McCroskey, Esq.:

Q. Who lived in that disputed territory 65 or 70 years ago?
A. Squatters lived there.
Q. What were squatters?
A. People who settled in there.
Q. Do you know of any squatters who lived in there?
A. The Tiptons might have been considered squatters.
Q. Who was Tipton?
A. Sam Tipton, he was a Tennesseean.

Redirect examination.

By Ben Posey, Esq.:

Q. Where did Tipton vote?
A. He voted at Beaverdam.
Q. In North Carolina?
A. Yes, sir.
Q. You spoke of his being a Tennesseean?
A. He moved from Tennessee and settled here in North Carolina.

Further cross-examination.

By T. E. H. McCroskey, Esq.:

Q. Where abouts did he live?
A. He lived in the mountains here. He lived on Hanging Dog for ten or fifteen years.
Q. Did he live at the Tipton place?
A. Yes, sir.
Q. How long did he live there?
A. Not long, maybe two or three months.
372 Q. His real home was on Hanging Dog?
A. Yes, sir.
Mr. Posey: Hanging Dog is in Cherokee County, North Carolina?
A. Yes, sir.

E. R. HUNSUCKER,
By EDMUND B. NORVELL,
Notary Public & Commissioner.

373 Isaac Lovingood, a witness of lawful age, after being first duly sworn, was called on behalf of the plaintiff and testified as follows:

Examined by Ben Posey, Esq.:

Q. How old are you?
A. Lacking two months of seventy-seven years.
Q. Do you know where State Ridge is?
A. Yes, sir.
Q. Do you know the neighborhood of the State Line between North Carolina and Tennessee?
A. Yes, sir. I know what they always called the state line.
Q. Where was it?
A. On the lower side of Tellico River.
Q. What is the name of the ridge?
A. State Ridge.
Q. How long have you known it as State Ridge?
A. It has been a long time, back, I would say 55 or 60 years.
Q. Did you ever know of any dispute about the line being there? Did you ever hear it contended that it was anywhere else?
A. No, sir, not until here of late. I never heard of any such a thing.
Q. Do you know the Tipton place?
A. Yes, sir.
Q. Where is it?
A. It is out on Little Tellico. It is east and south of the State Ridge.
Q. On what we call the North Carolina side of the State Ridge?
A. Yes, sir.
Q. Do you know where the people who lived there voted and paid their taxes?
A. Tipton sold out there and got away, and some man by the

name of Beavers came there. I can't be positive where the Tiptons voted, but I suppose they voted here.

Q. Where did Beavers claim as his home?

A. In North Carolina always.

Q. Where did he pay taxes?

374 A. In North Carolina.

Q. On that property?

A. Yes, sir.

Q. Do you know how long it has been since Tipton first went there?

A. No, sir, I can't be positive how long he stayed there. He went there at a very wild day.

Q. Has it been settled ever since?

A. Yes, sir, pretty much ever since.

Q. Do you know whether he stayed there some months or years?

A. I guess he stayed there five or six years, maybe longer. I can't be certain about that.

Cross-examination.

By T. E. H. McCroskey, Esq.:

Q. Mr. Tipton just had a hunter's camp there didn't he?

A. No, sir, he built a house and had his family there.

Q. Didn't he stay there in the summer?

A. Yes, sir, and winter too.

ISAAC LOVINGOOD,
By EDMUND B. NORVELL,
Notary Public & Com'r.

375 July 7th, 1910.

10.30 A. M., court reconvened.

Attorneys present for the plaintiff:

Theodore F. Davidson, Esq.; F. A. Sondeley, Esq.; Duff Merrick, Esq.; C. B. Matthews, Esq.

Attorneys present for the defendant:

T. E. H. McCroskey, Esq.; John Franklin Shields, Esq.

D. W. Deweese, a witness of lawful age, being first duly sworn, testified as follows:

Examined by Duff Merrick, Esq.:

Q. Mr. Deweese, where do you live?

A. In Murphy, Cherokee County, North Carolina.

Q. How old are you?

A. Sixty four, past.

Q. How long have you lived in Cherokee County?

A. Sixty four years.

Q. Are you familiar with the country along the line between the

States of Tennessee and North Carolina, which is now in dispute between the States of Tennessee and North Carolina in this suit?

A. I am familiar with that whole country in there, that is in dispute, as I understand it.

Q. Do you know where the line between the counties of Graham and Cherokee adjoin the State line?

A. Yes, sir.

Q. That point is called County corners?

A. Yes sir, it is a little southwest of Laurel Top.

Q. Did any one ever point out to you the line between the States f North Carolina and Tennessee, running from the County corners toward the Georgia line?

376 A. Yes, sir; I have had it pointed out to me many a time.

Q. Who pointed it out to you in particular?

A. Of course, I can't enumerate the various persons who pointed it out to me, because I can remember of being back in there as long as two or three years before the war. I was in there when I was a boy with an old man named Billy Graves.

Q. Is he living?

A. No, sir; he is dead.

Q. Tell us what Mr. Graves told you and what he pointed out to you?

A. There was an old gentleman that had a camp on what we called the state ridge. Mr. Graves and myself and others were there. He was a hunter, and my father's people had cattle in there. He told me that the state line was there where he was. He said he was with the party that ran the line. That is about my first recollection of it.

Q. You say that was the state ridge?

A. Yes, sir.

Q. In what direction does that ridge run from the point known as county corners?

A. It runs southwest.

Q. Did you ever go along that ridge?

A. Many a time.

Q. Were you ever along that ridge with William Graves?

A. Yes, sir, several times.

Q. How far along the ridge did you go with Mr. Graves to any point in particular?

A. I have been along from where the ridge strikes Tellico up to county corners.

Q. You have been along that ridge?

A. Yes, sir.

Q. Did Mr. Graves ever say anything to you about the marks, or did he point out any marks to you on this line?

A. Yes, sir; I think so. I am not positive about that. I was a boy. There are marks there. I have seen them often, and they were said to be state line marks.

Q. Do you remember how the marks were made?

377 A. Yes, sir; there were three hacks on the tree.

Q. Were all the trees marked with three hacks, or were there any other marks?

A. I have seen other marks along there. It strikes me that some of them had two hacks, and a blaze below them.

Q. Two hacks and a blaze?

A. Yes sir.

Q. Will you please repeat again what Mr. Graves said about running that line? Who was he with?

A. He told me, and I have heard him talk about it when I was in there with him and he said that he was with the engineers that ran the line.

Q. The original line?

A. Yes, sir; it was the original survey.

Q. That was the line running from the County corners southwest, and crossing the Tellico River?

A. Yes, sir, the line ran down the state ridge to the Tellico River.

Q. You spoke about ranging cattle in there? By permission of whom did you do that?

A. I suppose my people had permission from the Fains. We all knew that it was Fain's property. Since the war I have kept cattle in there, and I always got permission from the Fains.

Q. How long have you known that ridge as state ridge?

A. Well sir, I remember to have been on it time after time before the war, when I was a boy; six or eight years before the war.

Q. Was it called state ridge then?

A. Yes, sir.

Q. Did you ever hear any explanation of why it was called state ridge?

A. Yes, sir; because they said the state line was on it.

Q. Do you remember whether Mr. Graves ever told you anything about why it was called state ridge?

A. No, sir; I don't remember. He told me that the state line was there, and he said that he was with the engineers when they surveyed the line down that ridge.

378 Q. What official position have you held in Cherokee County?

A. I have been Sheriff four or five times, Clerk of the Superior Court twice, Representative in the Legislature once, and have held a number of minor positions. I have been Mayor of the town, and Superintendent of the Public Schools.

Q. What position do you occupy now?

A. Post Master at Murphy.

Q. How long have you been Post Master?

A. Nine years the first of this month.

Q. How long were you Clerk of the Court? Between what years?

A. I don't believe I can answer that exactly. I was Clerk eight years, beginning about 1884 I think.

Q. How long were you sheriff?

A. Eight years, and three or four months. I was first elected in August, I think—under the old election laws of this state, and was elected four times, and held over until December.

Q. Do you remember when your first term as sheriff commenced?

A. Yes sir, I think it was in August 1874.

Q. You said a while ago that you were familiar with that country in dispute and had been in there frequently ranging cattle: Did you ever go in there in an official capacity while you were sheriff?

A. Not excepting to collect taxes.

Q. You collected taxes from whom?

A. I always collected taxes from the Fains who claimed the land, and from some tenants under Fain.

Q. Do you remember a place in there called the Tipton place?

A. Yes sir.

Q. Who lived in there while you were Sheriff?

A. Some people named Beavers. They claimed some little property in there.

Q. To whom did they pay taxes?

A. To me, the Sheriff of Cherokee County, North Carolina.

Q. The writs of what state always ran in that territory while you were sheriff and clerk?

379 A. The writs of the State of North Carolina.

Q. Besides the Beavers, do you remember anybody else who lived in that territory?

A. The Fain's lived there and a man by the name of Harshaw, and their tenants who lived in there.

Q. Did they pay taxes to you during the time you were Sheriff of Cherokee County, North Carolina?

A. Yes, sir. They all paid personal taxes.

Q. Did the people who lived in that territory pay poll-taxes to you as Sheriff?

A. Yes, sir. And there were some people in there by the name of Hoss, and the Beavers, who paid poll taxes.

Q. Did you ever hear of the state of Tennessee ever attempting to claim any taxes from the people living in that territory?

A. No, sir; I never heard of it.

(The respondents except to the testimony of the witness in so far as he undertakes to detail conversations with Graves in regard to the location of the state line, because the same is purely hearsay, and in all respects incompetent.)

Cross-examination subject to the foregoing exception.

By T. E. H. McCroskey, Esq.:

Q. Did I understand you to say that there were parties living in this disputed territory, that is, between the state ridge and the ridge that goes around the head waters of Tellico River?

A. Yes, sir, people lived in there.

Q. Who lived in there from your knowledge?

A. Beavers lived in there. I am speaking of the people who lived in there when I was Sheriff. People named Tipton lived there, and the Hosses, and others that I don't remember now.

Q. Where did Tipton live?

A. On the Tellico river; a mile and a half or two miles above

what we understand to be the State line, where the line crosses the river at the foot of Jenk' ridge.

Q. On what we call Little Tellico?

380 A. I suppose so.

Q. Where did Hoss live?

A. Right close—within a half a mile with the divides; that is, the mountain that runs off from McDaniel Bald to Laurel Top. He lived on the head of that creek.

Q. Whose tenant was he?

A. He was Harshaw's, Fain's son in law. I think they had him there.

Q. Whose tenant was Tipton?

A. He was on the lands that he said he had bought from somebody. He was on his own lands. I collected taxes on the land, as the land of Beavers at various times.

Q. You mean where Tipton lived?

A. Yes, sir.

Q. Where did you collect taxes on the land as the land of Beavers?

A. Right on Beaver Creek. And Tipton lived there and paid taxes on Tipton Creek.

D. W. DEWEESE,
By EDMUND B. NORVELL,
Notary Public & Commissioner.

381 D. B. BURNS, a witness of lawful age, after being first duly sworn, was called on behalf of the plaintiff and testified as follows:

Examined by F. A. SONDLEY, Esq

Q. What is your name?

A. D. B. Burns.

Q. Where is your residence?

A. Knoxville, Tennessee.

Q. What is your age?

A. 34.

Q. What is your occupation or profession?

A. Civil Engineer.

Q. What has been your training as Civil Engineer from the beginning?

A. I received my High School education at the place where I was born and raised, at Burnsville, West Virginia. I graduated there at the age of 17. While I was in the High School I commenced my preparation for engineering work. While in the High School I was constantly engaged in common land surveying—all the spare time I had. After graduating at the academy I taught school for a couple of years, in the public schools. In the fall of 1898 I entered the University of West Virginia, and graduated there with the class of 1901, with the degree of B. S. C. E. Since that time I have been constantly engaged in civil engineering work.

Q. What does the degree of B. S. C. E. mean?

A. Bachelor of Science and Civil Engineering.

Q. How much experience have you had during that period spoken of since graduating?

A. The first work that I took charge of after graduating was with the Niva Coal & Coak Company, Berlin, Pennsylvania. There I had charge of the office work and calculations of about 23,000 acres of coal land. I stayed with that company eleven months, and then resigned my position with them and went to Morgantown, West Virginia, and engaged with Prof. R. L. Morris in engineering work under the firm of Morris & Burns. There I was constantly engaged in civil engineering work, surveying 7,000 acres of coal land
382 for the Cochran Coal & Coke Company, of Dawson, Pennsylvania, surveying various mountain lands also. Also I did a great deal of railroad work and street paving work. I was engaged with Prof. Morris about two years. I then resigned my position with him and accepted a position with the Baltimore & Ohio Railroad Company and was with them two years. While I was with them I was engaged in locating the new railroad from Uniontown, Pennsylvania, to Wheeling, West Virginia. Also surveyed a portion of their line from Cumberland to Cherry Run, along the Patomatic River. Resigning my position with them I went to Cleveland, Ohio, and was engaged with the Lake Shore & Michigan Railroad. I was engaged in making masonry designs for bridges and various improvements around Cleveland. Resigning my position with them, I came South and engaged in business for myself. Since I have been in the South I have worked almost entirely in Graham County, North Carolina. While I have been in Graham County I have surveyed three fourths of all the land embraced in Graham County. I have surveyed the state line between North Carolina and Tennessee from the Tennessee River around to Laurel Top, and the lands on Santeetlah, Snow Bird, West Buffalo, East Buffalo, Tellico, Slick Rock Creek, Deep Creek, Yellow Creek and the main water courses of Cheoah River, the county line and the state line. I have been engaged in that work for the past two years constantly, in the field and in the office.

Q. Did you do any work in Tennessee?

A. I don't remember of any work now that I did in Tennessee.

Q. In making these surveys of mountain lands have you had any experience in woods?

A. Yes, sir. When I was a boy I was in the woods a great deal. My father was a lumberman, and ever since I have been able to work, I have — out in the mountains with him. At that time I learned the trees and to distinguish the marks on trees. Ever since I was sixteen years old I have followed common land surveying, and I am perfectly familiar with old land-marks.

Q. Have you had any experience in retracing old lines that have been run and marked.

383 A. Yes, sir; I have been constantly engaged in that for two years.

Q. Did that involve the handling of old papers and a comparison of their statements with your work?

A. Yes, sir.

Q. To what extent?

A. All of the land that I have surveyed for the past two years I have surveyed from original grants and copies of the same.

Q. Do you think from your experience in surveying and wood work that you could form an opinion satisfactory to yourself relative to those matters on any question that might arise about them?

A. Yes, sir; I believe I could.

Q. What has been your experience, if any, in handling old plats attached to grants, or otherwise, of previous surveys?

A. I have had a great deal of experience in handling old plats. Most of the old grants that I have handled during the past two years had old plats attached to them.

Q. You said, as I understood you, that you had made some survey of the line between Tennessee and North Carolina. When did you make that survey—between what times?

A. I commenced the survey about the first of April, 1908. At that time I commenced at the crossing on the State Road, where it crosses the Smoky Mountain.

Q. Beginning in April, 1908, when did you finish the state line work which you have done?

A. I finished it in May, 1910.

Q. Between what points did you survey this line between North Carolina and Tennessee during that period—from what place to what place?

A. I commenced the survey in April, 1908, where the State Road crosses the Smoky Mountain, about three and a half miles north of the little Tennessee River, and surveyed from that point to the Unicoi Turnpike, to the 101 mile post, where it turned in a southerly course to the Georgia line.

Q. A distance of how many miles?

A. A distance of about 42 or 43 miles.

384 Q. With what instruments did you make that survey?

A. I surveyed it with a transit.

Q. What is the ordinary instrument used in surveying?

A. The ordinary instrument used in these mountains when the lines were originally made was the compass.

Q. Which is the better instrument for surveying?

A. The transit.

Q. What is the result of the work made with the two instruments, comparatively? Is the work more accurate done with the one than with the other?

A. Yes, sir. With the compass you cannot hope to get very accurate results. I suppose you could get one foot within 500 feet, while with the transit it is possible to get almost accurate results.

Q. You spoke of the survey of the state line which you had made. Did you find any trees bearing any marks along those lines?

A. Yes, sir; I found a number of trees all the way from where we began the survey at the State Road crossing the Smoky Mountain down to the Tennessee River, and up Slick Rock Creek to Big Fodder Stack; also from Big Fodder Stack to Junction, along

the main mountain, and also toward Jenks Knob and from there to the end of my survey at the Unicoy Turnpike, at the 101st mile post, along the mountain. Wherever we found good timber we found some marks, just as along the undisputed part of the state line.

Q. You speak of finding marked trees. How did you know they were state line marks?

A. A person that has been in the habit of tracing up old line marks can tell from the appearance of the marks.

Q. What indicates a state line mark rather than a private survey?

A. Fore-and-aft trees marked with a blaze and two hacks and a side line tree marked with three hacks; also you can tell from the tree about the age when the marks were cut through the bark of the tree. If the axe went into the wood, you can block the tree, take out the block and count the number of growths which will give you the number of years since the mark was made.

385 Q. Please explain the process which surveyors know as "blocking trees" to find out the age of the marks put upon them to indicate a line?

A. Most generally, one who is familiar with old marks can tell from the appearance of the bark on the outside whether the hack went to the wood. It makes a kind of a bulge at the place in such a way that you can tell. In hunting for state line marks we would cut the block out of the tree and then take an axe and split the block and count the growths since the mark was made and count the number of rings from the hack out of the bark.

Q. Suppose the axe mark did not pass entirely through the bark, what would be the use of blocking the tree?

A. None at all, because the hack didn't reach the wood. In that case I know of no way to tell the age of the marks, except by appearance.

Q. In making the state line survey that you spoke of did you use any means of checking your work and seeing that you were correct as you proceeded?

A. Yes, sir. When I began the survey on the Smoky Mountain side, I took an observation on the North Star, or Polaris, in order to determine the true meridian North and South. By running an accurate line and estimating the angle between the lines, by back sights and front sights, you will be able to calculate the course of each particular one. So I surveyed about six miles and took another observation on the North Star and obtained the true North and South meridian, and checked my work by the various angles from the first observation on the North Star; and then continued the survey to the junction and took another observation on that point, and found that my calculations checked. That was a check on the entire work.

Q. By the aid of the observation you took, could you tell whether you had made a mistake in taking the angles?

A. Yes, sir. It is possible to count all the angles, often, from the observation and count the true bearing of the line, but by taking a number of observations it will tell you whether you have

made an error in taking angles. I checked my work from the State Road on the Smoky Mountain to Junction in three different
386 places, and I was perfectly satisfied that it was right. About a year afterwards, I surveyed another line, an accurate transit line, from Junction over Stratton Bald, down the main ridge to the Cheoah River and down Cheoah River to Slick Rock Creek and tied into the line I had run the preceding year and found in the entire circuit practically no error at all.

Q. How many miles did that involve?

A. About 25 miles.

Q. Have you any means of checking the distance measured?

A. Yes, sir. And all the error in that 25 miles circuit was about fifteen feet,—the whole 25 miles, making just a few tenths of a foot per mile, making the result surprisingly accurate. Taking the line through there, one would hardly believe that you could get that accurate a result, but there is an absolute check upon it, and there is no way to dispute the accuracy of it.

Q. Did you make a plat and survey of the lands adjacent to it?

A. Yes, sir.

Q. Is this the plat you have here?

A. This plat represents a survey of the state line, the Tennessee contention and the North Carolina contention, but this plat does not show any of the lands I surveyed. It shows the various water courses, Cheoah, Santeetlah, Bear Creek, Snow Bird, West Buffalo and East Buffalo from an actual survey, except a few small streams entering into these streams. The Cheoah River is represented on this map as it actually is. I ran a base line down the Cheoah River, likewise the Tennessee. The same is true of Santeetlah and the other large streams.

Q. With what regard to Slick Rock Creek?

A. I surveyed Slick Rock Creek about five miles up the stream and the rest of it is sketched in from side notes in the field; but the streams represented in the Slick Rock Basin are very nearly correct.

Q. How about the Tellico River and the parts shown here? Was any measurements made of that stream?

A. No, sir. The Tellico River, where the line crossed it, is the only survey upon that river. The rest of it was sketched in from observations taken at different points.

387 Q. So that in this process of sketching in which you speak of you simply took observations at points and indicated their positions only from observations; you didn't survey them?

A. Yes, sir, that is true of Tellico River and Slick Rock Creek, about five miles from its mouth. The other streams I mentioned: Snow Bird, West Buffalo, East Buffalo, Santeetlah and Cheoah River are put there from actual survey and are correct.

Q. I see you have squares put down on this tracing linen. What do they mean? Just what are they?

A. They represent my method of platting, called the coordinate system. Those lines or squares as they appear on the tracing are drawn out the distance north and south, and east and west, the ones running in the direction of the arrow-mark, the true meridian

running north and south, and the others the true east and west, and they represent the true north and south and the true east and west. The squares are drawn at a distance of 5,000 feet a part, and represent what is known to me, or to any intelligent engineer, as the co-ordinate system of platting lines. What I mean by co-ordinate system is, that every point on that map has a distance which is figured from the axis whose crossing is the origin of that system. That is, a given number of feet from the east and west axis or a given number of feet from the north and south axis, the distance being due west or due east, or due north or due south from the point called zero or origin. Take the point marked, North 45,000 feet; that means that that point is north 45,000 feet from the origin; or the co-ordinate marked, West 105,000 feet, means the point 105,000 feet west from the origin. By this system, every little angle as shown upon this plat I have actually figured the distance it was west and north of that origin or zero. In platting this line, I simply used a scale and took the co-ordinate nearest to the point to be platted. Take the co-ordinate 130,000 west; that is a little more than 130,000 and not 135,000 west; and any point coming between those two would have to be determined by a scale; then by figuring up how much each line runs north and how much east and west, you can by that method determine the exact position of any
388 point on the map. This method eliminates errors commonly made by scale and protractor. By this system, you can get the actual point as nearly as it is practicable to be made.

Q. This system of squares insures accuracy of platting and is a check on your work?

A. Yes, sir. If you follow the co-ordinate system of work, it is impossible to make an error that you cannot detect.

Q. You spoke a while ago of marks on trees. I wish you would tell us how a surveyor, or his marker, indicates anything by the marks he places upon the trees?

A. I don't understand your question.

Q. As I understand it, a certain number of hacks or a certain number of hacks and a blaze indicate different things, and it is a question of hacking or blazing?

A. Yes, sir. In ordinary land surveying in Graham County, where I have been surveying for the past three years, a corner tree is marked with three hacks, indicating the direction from which the line approaches the tree; a fore and aft tree is marked with two hacks, the way the line enters and the way it leaves; and a side line tree is marked with two hacks, pointing in the direction in which the line runs. State line trees are marked with two hacks and a blaze, and a side line tree is marked with three hacks.

Q. A side line tree is not on the line, but near the line?

A. Yes, sir. It indicates that the line passed near by.

Q. And that *that* the line is on the side of the tree on which the hacks are placed?

A. Yes, sir.

Q. Is it a *promiscious* kind of hacking or hacking with some regularity?

A. Considerable regularity. The average marker will mark from six to ten inches apart,—some markers wider and some not so wide.

Q. Is any care taken to place one mark above another or below another?

A. Yes, sir.

Q. Does the fact that the marks are a regular distance apart and directly above each other aid you in determining whether
389 they were carelessly inflicted on the tree or put there for a definite purpose, so that you can tell whether or not they are surveyors' marks?

A. Yes, sir, you can tell in almost every instance.

Q. Can you tell anything about the direction in which the surveyor is going?

A. Yes, sir.

Q. How is that?

A. You can very readily tell by the marking on the trees. You can tell from the angle the ax makes on the trees, with the level plane on which the marker was standing, from the height the marks are placed upon the tree.

Q. He must, therefore, be passing in the direction of the upper portion of the line?

A. Yes, sir.

Q. By that means you can tell the direction in which he was going when he made the marks?

A. Yes, sir.

Q. Do surveyors ever strike directly across the tree at right angles?

A. Sometimes.

Q. Is that very often done? or do they strike with an incline?

A. That depends on the markers. I have seen some trees marked very low.

Q. In that case, the lower end indicates the direction in which they are going; and if they are marked at right angles with the body of the tree, you can't tell which direction they are going?

A. No, sir.

Q. Let us begin with the state line survey which you said you made. You began where?

A. Where the State Road Crosses the Smoky Mountain, about three and a half miles north of the Little Tennessee River.

Q. Where did you proceed from that beginning?

A. We ran the top of the Smoky Mountain from that beginning point down to the Tennessee River.

Q. What indications of a state line did you find along that way?

390 A. We found state line marks on the old timber on top of the ridges, quite a number of trees from the beginning point down to the Tennessee River. We struck the Tennessee River about half a mile above the mouth of Slick Rock Creek.

Q. Was there ever any dispute on that part of the state line?

A. There was no dispute on the Smoky Mountain down to the Tennessee River that I ever heard of.

Q. Did you have any document to guide you in making that survey of the state line?

A. Yes, sir. I had a certified copy of the Commissioners' plat of 1821.

Q. Did you use it in that work?

A. Yes, sir.

Q. Did you do any blocking on the line from where you began down to the Tennessee River?

A. Yes, sir. I blocked two trees from where I began to the Tennessee river.

Q. What kind of trees where they?

A. The first one was a white oak and the second one was a hickory on the north side of the Tennessee river.

Q. Did you count the blocks from the incision of the ax into the trees?

A. Yes, sir; I counted the rings on the blocks.

Q. What did they show,—how many years since the marks were put upon them?

A. 86 or 87 years. I forget whether it showed 87 distinctly or not. I know it showed 86.

Q. Have you any of those blocks, here, taken from the north side of the Tennessee river?

A. Yes, sir. I have one of them. This block, No. 1, taken from tree number 13, a white oak. This tree showed two sets of marks. It showed recent marks and also the original marks. In blocking the tree it happened to split at the old marks. You can see the old hacks, also the young hacks.

Q. What do the young hacks indicate?

391 A. That it has been remarked at some late date.

Q. Have you counted that block?

A. I counted it 86 years from the interior marks.

Q. Did you count the more interior marks?

A. Yes, sir.

Q. You didn't count from the exterior?

A. No, sir. The old marks was what I wanted to count.

Block No. 1 offered in evidence by the plaintiffs, said block being marked, "Block No. 1, tree No. 83 E. B. Norvell, Comr. 7-7-10."

Q. What is your experience as to marked trees as to growth found there or in more luxuriant soil?

A. Timber that has a scrubby appearance has very small growth.

Q. It would have small grain?

A. Yes, sir.

Q. In what year was that block taken out by you, and in what month of the year?

A. The first few days of April or the last few days of March 1908.

Q. In tracing the line from the point where you began to the Tennessee river, did you direct your attention to what you would have to do in following the line on the opposite side of the river?

Which course did you look forward to, to see how the line would probably run?

A. Yes, sir; I had a copy of the map, that the commissioners made, when I began my survey on the Smoky Mountain side. Before I crossed the river, I took that map and went to a point on the north side of the river, opposite the mouth of Slick Rock Creek, up above the mouth of the creek, possibly an elevation of 400 or 500 feet, from which position I had a splendid view of the whole Slick Rock Basin; I could see all of the principal peaks—Big Fodder Stack, Little Fodder Stack, Hangover and the whole Slick Rock Basin; and taking that original map I noticed from it, from the south side of the river, a distance of six or seven miles, indicated by the mile circles, a practically straight course to the first decided break to the left. I determined the general bearing of that portion from the meridian shown on the plat. I took my instrument opposite to the mouth of Slick Rock and set it up upon the same bearing
392 taken from the original map, and found that the bearing took me right over Big Fodder Stack. I might add that, at the time I went there, I was led to believe, from prior investigations made by C. Z. Denton, that the line went over Little Fodder Stack; and I expected the line to go over Little Fodder Stack; but after using the compass for that test I found that it went over Big Fodder Stack. I then abandoned the idea that the line could have gone in any other direction than up Slick Rock Creek and over Big Fodder Stack. I then began my investigation for marked trees.

Q. What led you to abandon the course that the line went over Little Fodder Stack?

A. The commissioners' map of 1821 shows six or seven miles practically straight, from where it crosses Tennessee river, to where it makes a decided angle to the left. I drew a line from the mouth of the stream marked "Creek", on the south side of the Tennessee river, to the first decided angle to the left. After ascertaining that bearing, I set my compass on that bearing, and found that it carried me over Big Fodder Stack. That gave me the idea that the line ran up the Slick Rock Basin.

Q. Was there anything in your observation, independent of the map, as you passed along the top of the mountain on the state line north of the Tennessee river, that induced you to believe that the Commissioners might have gone up Slick Rock Creek in 1821?

A. The whole trend of the line is in a southwesterly direction, following down the Smoky Mountain side north of the Tennessee river. From every prominent peak or elevation along that portion of the line, which is undisputed, you can see right in front of you, Big Fodder Stack; and all the way along, following the ridge from the Smoky Mountain side, that looks to be the most desirable route.

Q. The Smoky Mountain side is north of the Tennessee river?

A. Yes, sir.

Q. They call that range, north of the Tennessee river, Smoky Mountain?

A. Yes, sir.

393 Q. Where was that name lost as you approach Tennessee river?

A. I have heard it called Smoky Mountain to the Tennessee river.

Q. Beyond that point south, is it called Smoky Mountain?

A. I have heard it called Unicoi Mountain.

Q. From the Tennessee river, where you reached it on the north bank, what did you find and what did you do?

A. We followed the old marked line down the ridge. We found marked trees at close intervals all the way down, and on the bank of the river we found a tree there, tree No. 29, a hemlock, commonly called spruce pine, a fore-and-aft tree. One side of that tree had been blocked several years ago. I don't know how long or who blocked it. On one side the marks were still on it.

Q. Which side were the marks on?

A. It had been blocked on the side next to the river.

Q. Was that a fore-and-aft tree or a side line?

A. It was a fore-and-aft tree. It had a blaze and two hacks on the opposite side of the tree from which the block had been taken.

Q. How did those marks on the various trees which you found from where you began until you reached the Tennessee river correspond in general appearance and in appearance as to age?

A. They all had the same general appearance all the way through as to age and the method of marking. Everything was uniform from the Smoky Mountain side along the undisputed section as well as in the disputed section.

Q. What, in your opinion, was their age? Were they old enough to have been made by the survey of 1821?

A. It was almost impossible to tell from appearance just how old they were. One could tell that they were very old marks, but not how old.

Q. You saw nothing to suggest that it was a different line?

A. No, sir.

Q. How about the appearance of the instrument used for inflicting those marks?

A. Most of them had the appearance of having been made with a very small ax or hatchet. In a number of instances the marks spread.

Q. That indicated what?

391 A. That there was a long gash across the tree. Still, the trees might have been marked, and I believe in most cases they were marked, with a small ax; in fact, all that I now remember of.

Q. The expansion of the tree in growing would cause the more rigid bark to grow and that would cause the widening of the hack?

A. Yes, sir.

Q. From that spruce pine, on the bank of the river, where did you go?

A. I followed down the Tennessee River to a point opposite the mouth of Slick Rock Creek, crossed the river at the mouth of Slick Rock and continued the survey up the Slick Rock Basin.

Q. How far did you go up Slick Rock Creek?

A. 4.9 miles.

Q. What did you find along there?

A. I found a number of marked trees. In the first two miles they

were very plentiful. Then I continued the survey up the Slick Rock Basin to Big Fodder Stack lead, and found a number of trees marked, and blocked a fore-and-aft tree, blocked on both sides.

Q. Was it already blocked?

A. No, sir; we blocked it.

Q. What do you mean by the Slick Rock Basin?

A. The whole territory drained by Slick Rock Creek is called the Slick Rock Basin. I mean that, I followed up the creek until I came to the Big Fodder Stack lead, and there I left the creek and went up the Big Fodder Stack lead.

Q. What marked trees did you find from the Tennessee river to the point from which you departed from Slick Rock Creek?

A. Tree No. 41, block No. 4; tree No. 36, block No. 3, and a block that had been taken out by Charles Denton in August be-ore.

Q. Had the tree been blocked before?

A. Yes, sir. Charles Denton pointed that tree out to me, and afterwards produced the block which was taken from the tree, but I was not present when it was blocked.

Q. Have you the blocks from any of the trees which were blocked when you were present, from the point on the Tennessee
395 river to where you left Slick Rock Creek?

A. Yes, sir, I was present at all except block No. 3.

Q. Will you produce one of those blocks, please?

A. The block I hold in my hand was taken from tree No. 41, called block No. 4, which was a hemlock or spruce pine tree, about two feet in diameter, marked with three hacks, indicating a side line tree. You can see in this block, yet, three distinct hacks. We took this block out of the tree, and split it, and got into the wood where the original mark was made. You can see the print of the ax in the block.

Q. Did you count the number of annual growths since the incision was made in that tree with the axe?

A. Yes, sir.

Q. What did that show?

A. 86, I believe. I have not counted it for two years.

Q. How would that correspond with the survey of 1821?

A. It goes back to the year in which it was marked in 1821. I want to add that this block was taken out in April, 1908.

Block offered in evidence by the plaintiff, marked "Block IV, Tree 41, E. B. Norvell, Comr. 7/7/10." Also "IV" is cut in the block.

Q. From the point where you turned up the ridge, from Slick Rock Creek to Big Fodder Stack, near or at the top of the ridge, did you find any marked trees bearing state line marks?

A. Yes, sir; quite a number standing in very close to the creek; but after we got away from the creek the timber was very poor. It looked like it had been burnt, and a great deal of the large timber had been destroyed, and the rest of the timber was not of such char-' acter as to show the original marks.

Q. About how far from the creek did you find trees bearing those marks?

A. About a half a mile, and all the way up there were marked trees right up close to the top of Big Fodder Stack.

Q. Did those trees you found from Slick Rock Creek up show any signs of previous blocking.

A. Yes, sir, I remember one tree that was previously blocked I think that was all blocked at that time. Tree No. 49 was
396 formerly blocked that I saw there.

Q. Were those trees up that ridge side line or fore-and-aft trees, or some one and some the other?

A. Some one and some the other. We blocked tree No. 47,—blocked it twice,—it was a fore-and-aft tree.

Q. That was where you turned up the ridge from Slick Rock?

A. Yes, sir.

Q. Is that block which you hold in your hand the block which you took from the spruce pine at the point where you left Slick Rock Creek and turned toward Fodder Stack crest?

A. Yes, sir. It is called block No. 7, tree No. 47. It was a fore-and-aft tree.

Q. Did you find the axe marks in the tree?

A. Yes, sir; you can see the ax marks yet.

Q. Did you count the annual growths on that occasion?

A. Yes, sir; and I found that it corresponded with the date of 1821.

Q. What year and what month of the year was that block taken out?

A. In April, 1908.

Block introduced in evidence by the plaintiff, marked, "Block VII, tree 47, E. B. Norvell, Comr 7/7/10." Also "VII" is cut in the side of the block, and the block is in two pieces.

Q. Did you block any trees between the point last spoken of by you and the point at which you reached the top of the mountain, going from Slick Rock Creek to the crest of Big Fodder Stack Mountain?

A. No, sir.

Q. How did those lines on that ridge you went up from Slick Rock Creek, correspond in appearance as to age with the undisputed line on the north side of the Tennessee river, to which you referred?

A. Principally the same as to age and marking.

Q. When you reached the crest, did you come out on top of Fodder Stack,—Big Fodder Stack, or at what point?

A. Big Fodder Stack does not rise to a sharp peak. The highest part of Big Fodder Stack is a little west, a quarter of a mile
397 west of where the state line comes to it. The highest elevation of it, the peak itself, stands up very decidedly from the other parts of the ridge. The state line comes up to the lower side of the highest peak, but not to the end of the highest point.

Q. At that point you turned and followed what ridge?

A. I followed the top of the main ridge.

Q. From Big Fodder Stack to what point?

A. To the Junction of the Hangover Mountain and the main mountain.

Q. Did you find any trees along that line bearing state line marks?

A. Yes, sir; quite a number.

Q. How many trees, if you remember, or can ascertain from your notes, did you find between those two points bearing state line marks?

A. About 26, shown on the map. There were a few additions made to that by Mr. Gannet last Spring.

Q. Did you block any in that space?

A. I blocked two trees.

Q. Where were they?

A. The first one was between Big Fodder Stack and Rock Stack and the other one was a little under what is called Chestnut Knob. I have both blocks, but only have one of them here.

Q. I would be glad if you would produce that block and tell us from which tree it was taken?

A. I have block No. 9, taken from tree No. 78.

Q. That is near Chestnut Knob?

A. Yes, sir.

Q. Is that block, which you hold in your hands, the one that was taken from the tree you have just spoken of?

A. Yes, sir.

Q. When was it taken?

A. In April, 1908.

Q. Did you find the incision distinctly in the wood?

A. Yes, sir.

Block introduced in evidence by the plaintiff, marked, "Block IX, tree 78, E. B. Norvell, Comr. 7/7/10." Also "IX" is cut
398 into the wood.

Q. What was the age of the marks in the tree that you blocked near Rock Stack of which you have spoken here?

A. It was the same age as the others.

Q. How did the trees as to the marks, on that state line that you didn't block, correspond in appearance with the age of the marks that you did block and examine on the north side of the Tennessee River?

A. They had precisely the same appearance in every respect.

Q. Who was with you when you blocked the trees that you have heretofore testified to about blocking from the beginning of your survey up the Junction and to the ridges?

A. Z. C. Denton, my brother, Charles H. Burns, H. E. Libey, W. H. Bumgarner, and there were some others whose names I don't remember. Pat Orr was with me on some of that line, the blocking of tree No. 78, block No. 9, especially.

Q. Did you count the blocks immediately after you took them out, so as to make no mistake?

A. Yes, sir.

Q. In whose possession have they been since?

A. Mine.

Q. Did you put down the result at the time you counted them?

A. Yes, sir.

Q. Has any change been made since?

A. No, sir.

Q. After you reached the point you have spoken of as Junction, what did you do then?

A. At that time, in April, 1908, I continued my survey from Junction around by Stratton Bald, Hayo, Hangover and down the dividing waters between Bear Creek, Yellow Hammer Creek, and Slick Rock Creek. I proceeded with the state line from the Junction,—I took that up about a year later, about the first of April, 1909,—and surveyed it from that point to what is known as Laurel Top, and from Laurel Top I left the state line and run down Snow Bird. I did that work in connection with my land surveying in that territory, continued that line down the Cheoah River and tied up with my former line.

Q. Did you find any marked trees between Junction and Laurel Top?

399 A. Yes, sir; quite a number of them. I don't show any on the map, because at that time I didn't expect to be called upon to testify in regard to that.

Q. Were they fore-and-aft or side line trees?

A. Both.

Q. What was their appearance as to age and other things in comparison with the trees you found on the north side of the Tennessee River, as state line trees?

A. They had the same appearance.

Q. What was their appearance as compared with the trees you found up Slick Rock Creek, up to Big Fodder Stack and out to the Junction?

A. Exactly the same.

Q. Was there any dispute about the line from Junction to Laurel Top?

A. No, sir, none that I ever heard of.

Q. Following the state line from Laurel Top, where did you next make any survey from there?

A. I commenced my survey from Laurel Top in January, 1910, and only surveyed a little less than two miles, when there came up a dreadful snow storm, and I had to abandon the survey for a while, and came into Asheville and was working on the other work; then I went back to that point the following March and continued the survey from that point to Jenks Knob.

Q. From Laurel Top to the point called County Corners did you find any marked trees.

A. No, sir.

Q. Is there any dispute about that line?

A. No, sir; I never heard of any. The timber is poor along that ridge, and there is no timber along there that would show the state line marks now; but you might block into some of them and get the state line marks, possibly, very decidedly.

Q. Trees sometimes lose their marks, or external appearance on the trees. What is the cause of that?

A. The bark on the trees continue to shed from time to time; and on a large number of trees on those high peaks the freeze in
400 the winter sometimes has a good deal to do with the marks.

Q. From County Corners where did you go, more specifically than you have told us?

A. I continued down the State Ridge in a southwesterly direction.

Q. When you got down to the point called County Corners you took down the State Ridge?

A. Yes, sir.

Q. What was the appearance of that ridge as to being the main ridge from that point?

A. State Ridge is a very prominent and decided Ridge, it stands up high and keeps up its elevation pretty well. At the point called County Corners, the ridge stands up very prominent on the county line, going around from that point to McDaniel Bald. Unless a surveyor was very familiar with that country, he could hardly detect that there was another ridge there at all. It looks like you are going right down the side of a mountain.

Q. Which one of those two ridges would a surveyor most likely run in going through there?

A. Any body not familiar with the country would run down State Ridge, unless he had some one familiar with the country to guide him. It is a very decided ridge, while the other does not look like a ridge at all until you get past Mitchel Lick Gap.

Q. From the time when you struck the State Ridge to the Tellico River, did you find any trees bearing state line marks?

A. Yes, sir, there are quite a number of trees standing there that have state line marks.

Q. Did you block any of them?

A. I blocked one, but it turned out that it was hollow, the wood was decayed on the inside, and all of the other trees through there that had hacks on them cut to the wood had been blocked at some previous time. I found eight trees that had been blocked.

Q. The decay in the tree, if it was large enough to have been blocked in 1821, the mark would be in the decayed part?

A. Yes, sir.

401 Q. You say that you found eight trees that had been blocked, of which you have no blocks?

A. Yes, sir; I think that is the number.

Q. When you came to the Tellico River, did you find any trees on the opposite side bearing state line marks?

A. Yes, sir, I found two or three trees there bearing state line marks. I found one tree, No. 107, a holly, marked undoubtedly for the 86 mile tree. It had the figures 8 and 6 and a large letter M under them written on the tree.

Q. How is that?

A. It had cut upon it the figures 8 and 6,—86, and the letter M under that. The 8 is a very distinct gash, and is about an inch

or more wide all the way around. The figures 8 and 6 have the same appearance, except that the southwest side of the tree has been damaged from burning; that makes a little part of the 6 defective; but there is enough of the 6 remaining to determine very distinctly that it is a 6. Also part of the M is defective; but there is enough of it to show distinctly that it is an M.

Q. What was the apparent age of that, as corresponding with those marks on the north side of the Tennessee river that you spoke of?

A. The appearance of the marks undoubtedly looked as old as the marks along the state line—marked in a different way from the marks on the holly tree. The general appearance of it was undoubtedly as old as the other marks we found.

Q. What was the size of the holly?

A. The holly was about 18 inches in diameter. The 86 M was cut on the right hand side as you go up toward "Jenks Knob" and from the appearance of the tree was in tolerably good condition, except some burnt places or doty places on the upper side of it.

Q. Where does the State Ridge end in the direction you were going?

A. At the Tellico River.

Q. What is there at the opposite end of that ridge?

A. Another ridge called Jenks Ridge.

Q. How far is it from the Tellico River till you come to Jenks Ridge?

402 A. I suppose it is a 100 or 200 feet after you get up above the bank of the river.

Q. Is it a well defined ridge?

A. Yes, sir; after you get up a quarter of a mile.

Q. Where is the holly, in relation to the river and the beginning of Jenk's Ridge?

A. The holly stands something like a 1,000 feet, a little less than a quarter of a mile, from the river.

Q. Upon the ridge?

A. Yes, sir.

Q. Did you find any other marks between the Tellico River and Jenk's Knob, other than the holly, that were state line marks?

A. I didn't find any that I was sure about.

Q. How many marked trees did you find that you were sure of between County Corners and "Jenk's Knob."—that you were sure they were state line trees?

A. My recollection is that I found eighteen.

Mr. McCroskey: After you crossed the Tellico River, till you reached Jenk's Ridge, did you, or did you not, find any trees, except the holly, that you thought were state line trees?

A. None that I was sure of.

Mr. Sondley:

Q. Did you find any at Jenk's Knob?

A. No, sir.

Q. Why, then, would any one take the state line to be, from the County Corners, crossing Tellico River and up Jenk's Ridge, other

than the prominence of the ridges which you have given, as compared with any other ridge that might have been taken, if you have any other reason?

A. It corresponds almost exactly with the original plat of the commissioners of 1821 as to general course, also as to distance.

Q. Did you have a copy of the plat of 1821 with you there at that time?

A. Yes, sir.

403 Q. Did you make a comparison with it?

A. Yes, sir.

Q. When you got to Jenk's Knob where did you go from there with your state line investigation?

A. I abandoned the survey of the state line at Jenk's Knob at that time.

Q. Is there any dispute about the state line from Jenk's Knob to the Georgia line?

A. None that I have ever heard of.

Q. Tell us what you did in that space at that time?

A. I abandoned the survey at Jenk's Knob, I think it was in May, I went with Mr. Gannett to the 101st mile post, where the Unicoi Road crosses the state line, and we ran a joint survey of the line from that point along the main divide from that point to Jenk's Knob, and tied to the line that I had previously run in March?

Q. What did you find along there indicating marked trees?

A. Most of that ridge is barren. I suppose two-thirds of it is cleared entirely. The timber is very scrubby and not fit to show marks.

Q. State line marks?

A. Yes, sir; we found seven or eight trees, I suppose, along there that were state line trees.

Q. How did those marks compare in appearance in every respect with the marks on the trees on the north side of the Tennessee river, marked as state line trees, and between the junction and County corner, marked as state line trees?

A. They had exactly the same appearance. We did a little extra work at the 101st mile post, where the Unicoi Road crosses the mountain, as indicated by the plat of 1821, and runs in a southerly course to the Georgia line; and we made an investigation to find that line. For half mile we found marks, one fore-and-aft tree, which I blocked. I have that block. The purpose in making that investigation was to determine at what point they *tru*ned south, and the point called 101st mile post was shown on the map.

404 Q. If you have that block, will you please produce it?

A. The block I have was taken from tree 121, block No. 10.

Q. Did you find the incision of the ax in the wood?

A. Yes sir, it can be seen plainly now.

Q. Did you count it?

A. Yes, sir.

Q. Where did you make the count, and when?

A. When I took it out of the tree I had a magnifying glass, and I counted it then.

Q. Who was present with you when you took it out and from that time till you counted it?

A. E. E. Deputy and myself took it out. A number of others saw the block afterwards.

Q. Who was with you when you counted it?

A. Mr. S. S. Gannett.

Q. How many annuolar growths after it was cut did you find?

A. I counted 89. It is very hard to count. You have to have a magnifying glass. I counted it several times and I am satisfied that I am right.

Q. How did it correspond with the date of the survey of 1821?

A. It counted out exactly.

Q. Who has had possession of that block since you took it out?

A. I left it with Mr. Gannett, at Jenk's Knob, and I next saw it at the office.—Mr. Cozad had it.

Q. Do you recognize that (exhibiting block)?

A. Yes, sir.

Block introduced in evidence by the plaintiffs, marked, block "No. 10, tree No. 121, E. B. Norvell, Com'r 77/10." Also marked in pencil, "South of 101 M."

Q. How did it correspond with the marks you have spoken of as state line marks both on the disputed and undisputed line?

A. It had precisely the same appearance.

Q. We have traced, Mr. Burns, on the map you have used in illustrating your testimony up to this point,—from the
405 point where you began up to the point they turned south to the Georgia line at the 101 mile tree. How is that line you have spoken of indicated on this map you have used in illustrating your testimony?

A. The line that I spoke of, which shows the undisputed section of the line; also the North Carolina contention of the line, is shown in the heavy, solid black line.

Q. How is the disputed section shown—the way you have shown it up to this time, the one you followed up Slick Rock Creek?

A. It is shown the same way.

Q. Is that the entire broad line I have gone over with you up to this time as the heavy solid black line?

A. Yes, sir.

Q. Let us run to this point marked "junction" on this map. You testified that when you reached that, after surveying from the beginning up to that, in the various ways you made that survey to Stratton Bald, and then you went somewhere else?

A. Yes, sir. I commenced the survey at the junction and surveyed the top of the ridge leading over Stratton bald, Hangover and down the dividing waters between Slick Rock Creek, Bear Creek and Yellow Hammer Creek.

Q. I see two points marked Hangover. You mean the more northeasterly of those.

A. Yes, sir, the one standing out in large type letters.
Q. Not the one over on Tellico River?
A. No, sir.
Q. Why did you make any such survey as that?
A. I understood that was the line claimed by Tennessee.
Q. When did you make that survey?
A. In April, 1908. I made a careful survey over that portion of the line which I have described, and examined it very thoroughly for old marks and failed to find any. The oldest marks I found were some old marks that had been made in the '50's.
Q. Private land marks?
A. Yes, sir. I didn't find any state line marks, except of recent date. I blocked the line in two places and the record shows
406 that the blocks were 24 years old. There were no old marks along that whole line.
Q. Do you know who made these marks that are made like State line marks that are only 24 years old?
A. I don't know positively. Mr. Chambers said to me one time that he was supposed to have made them.
Q. When you started at Junction and running up Stratton Bald you came to Hayoe, where did the main ridge run?
A. Down to Cheoah River, about five miles above its mouth, a very decided ridge, where there are a number of smaller ridges running from Hayoe between Slick Rock and Bear Creek, and between Barker Creek and Bear Creek. The most prominent one leads from Hayo down to Cheoah River, about seven miles above the *north* of Slick Rock, and five miles above the mouth of Cheoah River.
Q. What is the highest average ridge running from that main point down?
A. There is really only one prominent ridge running from Hayo across to the Cheoah River, about seven miles from Slick Rock Creek.
Q. How continuous a ridge is that which runs between Slick Rock and Bear Creek?
A. After you leave Hangover, it drops very rapidly. There are a number of deep gaps in the ridge. Really, after you leave Hangover, there is only one peak that stands out very high,—Cold Spring Knob. It is cut in two by several gaps. It is a continuous ridge from Hangover to the river, until within a quarter of a mile from the river, the ridge forks. One leads to the mouth of Slick Rock and the other up Tennessee River, about a quarter of a mile above where the dotted line crosses Tennessee River on this map.
Q. Did you ever hear any contention made on the part of Tennessee that the state line ran by Sourwood Gap; or that there is a state line tree there?
A. Yes, sir. I heard that there was a sourwood tree there, marked, that was contended to be a state line tree.
Q. About that question did you ever make any examination in that territory?
407 A. I made a close examination; also made an examination of the tree at the time. It is a low gap, also it is a very de-

sirable camping place. I have been told that it was one time used for a camping ground. Also, there is an old trail leading through there. The sourwood tree is a forked tree, old and scrubby, and was hollow. On one side it had been blocked. It does not look, like it had been done very many years ago. The tree has a number of hacks upon it and some blazes. It had one hack on one side, two on another and five on another; also an old blaze; but there was no regularity about any of the hacks or marks. It had the appearance of having been done at different times, and no resemblance to any of the hacks on the disputed or undisputed section of the line. I understand that it used to be a prominent deer stand. In my judgment, and opinion, as a surveyor, I think, in fact I know, that it never had any state line marks on it.

Q. Did you find the marks that the state of Tennessee claims to be state line marks? Did anybody point these out to you?

A. There was no one from Tennessee with me. I examined the tree myself.

Q. On which side of the tree was there a blaze, or any blazes, if there was more than one?

A. My recollection is that the most prominent blaze was on the side facing the river.

Q. What was there above it,—anything directly above it?

A. My recollection is that there were two hacks right close together. My recollection is that the blaze was at one place and the hacks at another. It was not marked in the way a state line is marked or any other regular mark,—say, a blaze and two hacks directly over it. It didn't have that appearance.

Q. Was there any timber in that vicinity that could have been suitable in 1821 to put a state line upon?

A. Yes, sir, the timber is very good upon that ridge. After you leave Hangover for a piece there is no timber, but that is only for a short distance; from there on there is fine timber to the river.

408 Q. How is it from Hangover out by Sourwood Gap and on out by Stratton Bald?

A. After a quarter of a mile from Hangover there is good timber.

Q. Was it old enough to have retained marks in 1821?

A. Yes, sir; the timber has been standing there for hundreds of years. Out from Hangover there is hardly any timber at all, and you could hardly get through it at all except on an old bear trail. There is nothing there but laurel, that is, what some people call ivey in that territory. From Hayo to Hangover there is a little gap called Saddle Tree Gap, and from there, as you approach Hayo, there is some timber. From Hayo around to Stratton Bald, the timber is scrubby, but there are several trees that were old enough to show state line marks. There is some timber that shows land marks made about 1850.

Q. Now, taking the distance from where you began to the Tennessee river, and from there down to the mouth of Slick Rock Creek, just what would it be from the same mile trees.

A. I began my survey at the Smoky Mountain road. This Spring

Mr. Gannett surveyed from there back toward the Gregory Bald and stopped at the 59th mile tree, which tree is undisputed, as being on the line between Tennessee and North Carolina; at least it is spoken of by Mr. Hale in his deposition as an undisputed mile tree. While I was not with Mr. Gannett, on about two and a half miles of that survey, he furnished me with a copy of his notes, and from his notes I made that portion of this map, the distance surveyed by him from the 59th mile tree to the place where I commenced. Starting at the 59th mile tree, which is a point in the undisputed section, we find by exact measurement that it is 6.02 miles from there to the Tennessee River, opposite to the mouth of Slick Rock creek on the south side of the river. By taking the commissioners' plat of 1821, and locating the 59th mile circle from their plant, and counting the circles from there to the river, and also from their report, we find the 65th mile tree at the Tennessee river. So, our actual measured distance from the 59th mile tree down, as we followed the line till we struck the Tennessee river, about a half mile from slick rock, and crossing at a point opposite the mouth of slick rock, makes our 65th mile fall in the Tennessee river. Comparing the dis-
409 tance from the 59th mile tree to the south side of the Tennessee river, as claimed by Tennessee, it is only 5.47 miles.

Q. So that, if the surveyors of 1821 had crossed the river where they first struck it directly, that would have given the correct distance, if the river was crossed a half mile up above?

A. No, sir, it is a little more than a half mile.

Q. But, going down and crossing at the mouth of Slick Rock Creek, you get the distance exactly?

A. Yes, sir; it is rather remarkable to see how close it is; a difference of about 200 or 300 feet in a distance of 6 miles.

Q. Going on up Slick Rock Creek and to the point where the ridge turns up Big Fodder Stack and to the Junction, what is the distance?

A. From Tennessee River to Junction is 10 miles.

Q. According to the report of 1821, from the 59th mile post to Junction would be what?

A. It is 16 miles.

Q. That is according to the survey of 1821. From your survey what is it?

A. It is exactly the same. In determining the distance to Junction from their plat I used the place where there is a decided break in their line.

Q. Can you recognize from their plat what the break was?

A. Yes, sir; it is apparent to my mind and I think to any intelligent mind.

Q. Suppose you take Tennessee's contention, and run from the 59th mile post, and cross the Tennessee river, and go up the ridge, dividing the waters between Slick Rock and Bear Creek, what would be the distance from Junction to 59th mile tree then?

A. About 14 miles, two miles shorter than the other way.

Q. Then, according to the Tennessee contention, there is a loss of half a mile as I understand, in the distance to the crossing of the Tennessee river?

A. Yes, sir.

Q. And a loss of another mile and a half, according to the Tennesse claim, to the Junction?

410 A. Yes, sir.

Q. Whereas, the North Carolina contention corresponds with the report of the commissioners?

A. Yes, sir.

Q. Suppose, starting from the 59th mile tree and running to the 65th mile in your general direction, how would that tally with the report of the Commissioners of 1821?

A. From the 59th mile tree up to the 65th mile, or the south bank of the river shown on this large plat, we have a bearing South 55° 5′ West. On the Commissioners' plat the bearing from the 59th mile tree to the South bank of the Tennessee river is, South 58° West, a difference of a little less than 3 degrees.

Q. Take the bearing up to the first sharp turn in the line at Big Fodder Stack?

A. The bearing from the 59th mile tree to the Big Fodder Stack, on the large plat, is South 49° 41′ West; the bearing shown on the Commissioners' plat from the 59th mile circle to the first decided angle to the left in the general bearing,—show between six and seven miles from the Tennessee river,—the bearing is South 50° 40′ West, a difference of only one degree.

Q. Suppose you were to take the same 59th mile post, and take the bearing from there to Hangover?

A. That would be South 29° 8′ West.

Q. What would be the difference between that and the report of the Commissioners' of 1821?

A. About 20 degrees, or a little more.

Q. Suppose, then, you take the bearing from the south bank of the Tennessee river to Big Fodder Stack, how would that compare with the reported bearing of 1821?

A. From the south bank of the Tennessee river to Big Fodder Stack on the large plat is, South 44° 28′ West; the bearing shown on the Commissioners' plat of 1821 from the south bank of the river to the first decided break is, South 43° 25′ West.

Q. A difference of what?

411 A. One degree and three minutes.

Q. Take a similar bearing from the river to Hangover and Hayo which form a sharp break?

A. From the south bank of the Tennessee river to the Hangover is South 9° 39′ West.

Q. How does that differ in amount from the reported bearing of 1821?

A. About 34 degrees.

Q. Suppose you were to take, for instance, Big Fodder Stack, could you identify that on the plat of 1821?

A. Yes, sir.

Q. How clear are you that that is indicated on the plat of 1821?

A. I am governed by the bearing of the plat from Tennessee river

and the number of miles from Big Fodder Stack to the Tennessee river, which correspond almost entirely to the little break.

Q. Is there anything on the line up the ridge, as Tennessee claims, up from the Tennessee river that corresponds with the map of 1821.

A. No, sir. Tennessee's contention would have it go over Hangover; and, instead of making a decided break to the left, it makes a decided break to the right.

Q. Now, measuring from the Tennessee River to the Big Fodder Stack what is the actual distance as measured on the ground?

A. 6.67 miles.

Q. How would that tally with the map of 1821, as to the distance?

A. As near as we can determine from the mile circles, it would tally as close as it is possible to scale it.

Q. How far is it from the Tennessee River to the Big break, the way Tennessee claims, around up the ridge between Slick Rock and Bear Creek?

A. It is 5.9 miles from the south bank of the river to the Hangover, according to their contention?

Q. How does that tally with the claim of 1821?

A. It looks to be about 6¾ miles. The distance from the decided break in the angle to the left is about the same distance.

Q. Take the distance from Big Fodder Stack to the Junction, what is that?

412 A. The distance from Big Fodder Stack to Junction is 3.3 miles.

Q. What is the distance from Junction to Hangover?

A. 2.59 miles.

Q. What does the plat of 1821 show the distance between Big Fodder Stack and Junction to be?

A. About 3 1-3 miles.

Q. Which compares more closely, from Big Fodder Stack to Junction or from Junction to Hangover?

A. From Big Fodder Stack to Junction.

Q. What is the course from Big Fodder Stack to Junction?

A. South 18° 12′ East.

Q. What does the plat of 1821 show?

A. South 19° 15′ East.

Q. What is the course from Hangover to Junction?

A. South 60 West.

Q. How many degrees different from the state line survey that you have just spoken of from Big Fodder Stack to Junction?

A. About 50 degrees.

Q. Well, your surveys from Jenk's Knob to the County Corner-east, you say, has showed the Tennessee contention in the vicinity of Tellico River?

A. Yes, sir.

Q. How have you indicated that contention on this map of yours?

A. By the heavy broken line.

Q. How have you indicated Tennessee's contention from Junction to Tennessee river?

A. In the same way.

Q. How did you survey from the County Corners at Jenk's Knob so as to indicate the contention of Tennessee? and what did you find when you were making that survey?

A. I made my survey in March, 1910. I commenced the survey at Jenk's Knob, and surveyed around by Rocky Knob, Hangover,—a different Hangover,—McDaniel Bald and on by Cold Spring Gap and Moss Gap to the County Corners, near Lebo.

413 Q. Did you make an examination for state line marks?

A. Yes, sir.

Q. How was it timbered around there?

A. There was good timber.

Q. Was it old enough to have been marked in 1821?

A. Yes, sir.

Q. What did you find in the way of state line marks from Jenk's Knob around to County Corners?

A. I didn't find any.

Q. What distance is that?

A. About 11.31 miles.

Q. What is the distance from Jenk's Knob to County Corners by way of Jenk's Ridge and State Ridge?

A. It is a little more than five miles.

Q. What is the difference in the distance between Jenk's Knob and County Corners that way?

A. About six miles.

Q. Tennessee's contention being the longer way?

A. Yes, sir.

Q. How many marked trees did you find in going from Jenk's Knob to County Corners?

A. About 18, including the ones formerly blocked.

Q. You found 18 trees along the North Carolina contention, a distance of five miles and no trees along the Tennessee contention, a distance of over 11 miles?

A. Yes, sir.

Q. Taking the course from County Corners to Jenk's Knob according to the state line report of 1821, which would it more nearly correspond with; the line along State Ridge and up Jenk's Ridge, or the line as claimed by Tennessee, going around the head of Tellico river, Cold Spring Gap, etc.?

A. From the best comparison we can get from the original plat of 1821, we can get it very close by having located the 86th mile tree. The course given on the large map from County Cor-

111 ners to Jenk's Knob is, South 50° West, while on the Commissioner's plat of 1821, it is South 54° 45′ West, a difference of only 4-45′, which would be natural variation. I mean by that, the line run by the magnetic compass in 1821, that the variation in the magnetic needle would make the difference.

Q. The variation in the magnetic needle would make the difference?

A. Yes, sir.

Q. If you can make any sort of a comparison between that plat of 1821 and the way Tennessee claims it should run now, how much out of your way would you have to go from a straight line to that at the furthest crossing?

A. From County Corners to McDaniel Bald the course is, South 20° 50′ East, while the Commissioners' plat of 1821 shows a course of South 54° 45′ West for that distance; it is almost at right angles.

Q. Would that be equally true from Jenk's Knob to Rocky Knob?

A. That course is, North 45° 55′ West.

Q. What is the nearest distance North from Cold Spring Gap to the State Line Ridge?

A. About 3.3 miles.

Q. So that, according to that calculation, there would be one point on the Tennessee contention over three miles distant from what the plat of 1821 shows it to be at that place?

A. Yes, sir, and also what the marked line shows it to be at that place.

Q. Have you ever made any plats showing the location of the state line, as contended for by North Carolina, from the Tennessee river to Junction, and from County Corners to Jenk's Knob as compared with the contention of Tennessee for those locations?

A. Yes, sir.

Q. How accurate are they?

A. The plats that I made are precisely on the same scale as the plat of 1821.

Q. Are those contentions correct as indicated on this map as the contentions of North Carolina and Tennessee?

A. Yes, sir.

Q. Have you ever made any map or plats to show the rela-
415 tive position of the North Carolina contention for those portions of the line as compared with the plat of the Commissioners of 1821?

A. Yes, sir.

Q. How accurate are the plats you made?

A. Just as accurate as they could be platted on the scale I used.

Q. What is this (exhibiting plat)?

A. This is a tracing of the line from the 59th mile tree to the 101st mile. This exhibit shows the tracing of the line "as settled, run and marked" by the Commissioners as shown by their plat; also the surveyed line on same scale claimed by North Carolina, between the same points, also shows the plat on the same scale of the line claimed by Tennessee, between the same points.

Q. They are as indicated and stated on this plat?

A. Yes, sir.

Q. Which of the contentions for those portions of the state line, North Carolina's or Tennessee's, most nearly represents the plat of 1821?

A. The contention of North Carolina represents the original plat in almost every detail. The general trend is the same, and when you compare the very small angles one with the other they are almost

identical; while the plat claimed by Tennessee shows altogether a different course, both in the general trend and in the small angles. For instance, South of the Tennessee river there is a decided angle to the right, while the original plat shows a decided angle to the left; and in the surveyed lines on Tellico river one goes around the head of Tellico and makes a very absurd comparison with the plat of 1821. There is no comparison at all in the disputed section, while in the undisputed section it is the same.

Plat just testified to offered in evidence, marked "Complainant's Exhibit No. B filed before me July 7th 1910. Edward B. Norvell, Notary Public & Comr."

(Here follows map marked Complainant's Exhibit B.)

Q. Did you ever make a plat that showed on one diagram the contention of North Carolina, the contention of Tennessee and the plat of 1821?

A. Yes, sir.

416 Q. What is that map you have in your hand?

A. I made a plat on the same scale of 1821, which shows that part of the state line in dispute, the Tennessee contention in red and the North Carolina contention in black; also it shows the mile circles from the 59th mile tree to Junction. In arranging these circles I placed a circle at the end of every 320 poles, just an exact mile, and I find that it comes out on this plat right at the Junction. You can see a small deviation between the small mile circles, which compared favorably with the plat of 1821. The difference from junction to Jenk's Knob was about .6 of a mile, longer, and the mile circles are lengthened at the end of each mile in proportion to show the exact number of mile circles shown on the original plat, believing that they had made an accumulative error and not all in one place.

Q. How about the accuracy of this map you have been talking about, which shows those three things on one diagram?

A. It is just as accurate as a survey could possibly show. On that scale it is almost absolutely correct.

The last mentioned plat offered in evidence by the plaintiff, marked "E. B. N. 2—7 7/10." also Complainant's Exhibit C.

(Here follows map marked Complainant's Exhibit C.)

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Q. I don't know whether I asked you in regard to the distance from 59 mile post to Jenk's Knob as compared with the plat of 1821 or not?

A. No, sir.

Q. What is that distance as compared with the plat of 1821?

A. The distance from the 59th mile tree to the 86th mile tree on the line I surveyed is 27.64 miles.

Q. What should it be, according to the plat of 1821?

A. 27 miles, a difference of 0.64 of a mile.

Q. What is it, as shown by the Tennessee contention, running as they say the line should run between those points?

A. The distance from the 59th mile tree down to the river and across the river, running the way Tennessee contends, around Stratton bald to Junction and around on the undisputed section of the line, as claimed by them, would be 25.56 miles, showing a difference in the distance of 1.44 miles.

417 Q. That is, if you take the North Carolina contention?

A. Yes, sir.

Q. Suppose you take the Tennessee contention and go around Tellico from Slick Rock?

A. You cannot take that, because the 86th mile tree stands in the disputed section. You can make it from Jenk's Knob?

Q. Make it that way?

A. The distance from the 59th mile tree to Jenk's Knob, following the North Carolina contention and the undisputed line is 28.77 miles.

Q. What is the distance, if you follow the Tennessee contention?

A. 32.8 miles.

Q. What is the difference?

A. About 4.1 miles.

Q. What is the distance, following the map of 1821?

A. 28.1 miles.

Q. Then the Tennessee contention would lose something from the Tennessee river by way of Hangover and Junction to Jenk's Knob and would gain something from County Corners around by McDaniel Bald to Jenks Knob?

A. Yes, sir, they would lose about two miles around by the way of Hangover and would gain about six miles around by McDaniel Bald, and yet there is a discrepancy of about 4 miles.

Q. Now, Mr. Burns, I see you have on this map, which you have been using to illustrate your testimony from the beginning of your examination,—and which you have sometimes called the "big map", laid down the Tennessee and Cheoah Rivers. I understand you to say that you have laid them down from actual survey?

A. Yes, sir, I surveyed the Little Tennessee river 28 miles.

Q. At what angle does the Cheoah River enter the Tennessee river,—at what angle with the Tennessee river?

A. That would depend on how you look at it.

Q. Take the Tennessee river at point of junction?

A. About 80 degrees, it looks to me.

Q. They make an angle of what at where they meet?

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418 A. Right at the mouth, about 30 degrees.

Q. What angle does Slick Rock Creek make with the Tennessee river?

A. About right angles.

Q. At what angle does the stream laid down on the plat of 1821 as "Creek" on the state line enter the Tennessee river?

A. About right angles.

Q. Is it possible that that thing marked "Creek" on the plat of 1821 could be Cheoah River?

A. No, sir.

Q. Why not?

A. Because Cheoah River for a distance of 10 or 12 miles is almost right angles with the undisputed section of the line on Smoky Mountain side, as well as on the south side. The thing marked "Creek" on that plat shows that the state line follows it for about a mile and a half.

Q. At the point at which the spruce pine stood on the state line going toward Georgia as you reach the Tennessee river; what was opposite that spruce pine on the south side of the river?

A. Directly facing the opposite side of the river from the spruce pine on the north bank, there was a high rocky bluff, standing in elevation from 500 to 700 feet. It would be almost impossible to climb up it.

Q. How practicable would it be to make the line up that bluff?

A. It would not be practicable at all.

Q. How far up and down the river does that bluff extend?

A. About a half a mile I would say,—about a quarter of a mile each way from the point opposite the spruce pine.

Q. Then a corps of surveyors, if on the opposite of that spruce pine, would have had to have gone around that bluff and make a detour of *of* at least a quarter of a mile?

A. Yes, sir.

Q. That would bring them down at least half way to the mouth of Slick Rock?

A. Yes, sir.

Q. Is there any sharp pointed ridge that runs into the Tennessee river opposite the spruce pine?

419 A. No, sir, none within a quarter of a mile.

Q. Now, I see on this plat, which you have used for the purpose of illustrating your testimony, from the beginning a certain portion marked, "Tracing of State Line of 1821." What is that?

A. It is an exact tracing, so far as I could trace it, from a certified copy of the map of 1821.

Q. I see over on the left hand end of this map a table of figures and names of trees and their location, marked "Schedule of State Line Trees Located". What is that?

A. That is a schedule of state line trees we located. The first column on the left represents the tree numbers, and that corresponds with the number of each individual tree as it appears on the map.

Q. That is according to the undisputed section and the North Carolina contention?

A. Some of the trees are given upon this plat in various positions from that given on this column on the left. The first column gives the number of the tree, the second column gives the number of the block taken from the tree, the next column gives the kind of tree, the next column the diameter of the tree, the next column the location of the tree, and the last column how the tree is marked, whether marked in a regular way or not, and whether it was a fore-and-aft tree or a side-line tree, or just how it was marked.

Q. Who made that table originally?

A. When we were in there two years ago a table was arranged at that time of some of the trees. I think Mr. Libby made the map and I arranged the schedule myself. Some of the trees that appear on that plat appear on this one.

Q. Who made the schedule on this plat?

A. I did.

Q. From what data?

A. From the actual data taken in the field by me. A few of the trees in that Slick Rock region were furnished by Mr. Gannett last spring. He made some additions to the schedule I had made.

Q. How correct is it, as to what you located yourself?

420 A. It is just as correct as I could make it.

Q. Have you made any investigation as to those he located that you didn't locate?

A. I had a copy of his notes.

Q. Do you remember which of the trees on that plat was located by him?

A. I can tell which of the trees I know anything about. The trees personally located by me in the field are: 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 36, 37, 38, 39, 40, 41, 44, 45, 47, 49, 52, 55, 56, 61, 62, 63, 64, 65, 66, 77, 78, 79, 83, 84, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 98, 99, 100, 102, 104, 105, 106, 107, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124.

Q. As to the trees you have mentioned, that table is correct of your own knowledge?

A. Yes, sir.

Q. I see another table in the lower left hand corner, marked "Comparison of Distances." What is that?

A. From that table, or comparison of distances, I undertake to compare the distance from the points that we can locate on the original map of 1821 and the survey of the present time. For instance, between the 59th mile tree to the Tennessee River and the 86th mile tree and the 101 mile, the only mile that I was able definitely to find. There is no doubt in my mind as to the correctness of that plat.

Q. Subject to the explanation which you have given in your testimony, is this big map, which you have used in illustrating your testimony, correct?

A. Yes, sir, just as correct as it is possible to make it.

The map above referred to offered in evidence by the plaintiff, marked "Complainant's Exhibit D filed before me July 7, 1910.

EDMUND B. NORVELL,
Notary Public & Com'r."

Court adjourned until 10:30 a. m. tomorrow.

(Here follows map marked Complainant's Exhibit D.)

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July 8th, 1910, 10:30 A. M. Hearing Resumed.

421 Attorneys present*ing* representing the plaintiff: Theodore F. Davidson, Esq., F. A. Sondley, Esq., and Duff Merrick, Esq., and C. B. Matthews, Esq.

Attorneys present*ing* representing the defendantff: T. E. H. McCroskey, Esq., and John Franklin Shields, Esq.

The examination-in-chief of D. B. Burns resumed.

Mr. Sondley:

Q. You described on your examination heretofore taken at this time the character of the ridge between Slick Rock and Bear Creek and on up by way of Hangover and Stratton Bald to the Junction. I wish you would state the character in point of continuity of the ridge from Big Fodder Stack to Junction?

A. The ridge from the Tennessee river, or near the Tennessee river, leading up to Hangover and by way of Cold Spring Knob, along the water sheds of Slick Rock Creek and Bear Creek and Yellow Hammer Branch, is a distinct ridge, but is broken into by very deep, low gaps. Slick Rock Gap, Big Fat Gap and Sourwood Gap are very decided and deep gaps. The ridge is comparatively low till you get pretty close to Hangover, and it rises rapidly as you approach it.

Q. From what point does it begin to rise rapidly?

A. The last low point is Big Fat Gap, and then it is almost a continuous rise, broken into by Buckeye Gap and Grassy Gap. It commences and rises fast from Big Fat Gap to Hangover. There is a considerable drop from Hangover to the river, but after you reach Hangover, going from the river, Hangover itself being possibly 5,000 feet in elevation; then from Hangover, by way of Stratton Bald and Hayo, it is very high, while the ridge, from Big Fodder Stack to Junction, is a very high ridge and a very prominent ridge, and is really where the main mountain goes from Big Fodder Stack to Junction and keeps up its elevation well all the way through. There are some gaps in it, but they are not very deep, and there are some prominent peaks,—Rock Stack and Chestnut Knob. Fodder stack is the main mountain in that locality.

Q. Please describe as well as you can, the territory im-
422 mediateiy adjoining Slick Rock creek and through which Slick Rock creek runs below the point where the line starts up the ridge toward Big Fodder Stack?

A. Slick Rock creek is a creek that has a considerabe fall from the Big Fodder Stack lead to its mouth, also clear to its head. I have been over all of the creek from the Big Stack lead to the mouth. It has two pretty high falls. The lower falls are about fifteen feet high and the upper falls are about 25 feet high. Slick Rock creek comes down through what might be called a gorge. The mountain rises very steep from either side, those leading to the little Fodder Stack rise more rapidly and higher than the ones to the Hangover ridge for the first 3 or 4 miles. There is practically

no level land on the creek. I suppose there is not more than an acre and a half of level land on the creek from the mouth of it to Big Fodder Stack lead.

Q. What appearance does that Slick Rock country, from the river up to where it and the state line of North Carolina separates, present to a person on top of the Smoky mountain on the north side of the river, with respect to the ease with which he could pass over it?

A. Facing it from any point on the Smoky Mountain, there are a number of places that you can look right up Slick Rock basin; and it has the appearance of being an easy way to get up. Looking at the view from the north side of the river, it looks like it would be easy to travel that territory up from the creek, and up the creek to another high peak on the main mountain beyond.

Q. But in truth, when you attempt it, what is the result?

A. After you get in there a piece, you really go up a gorge, and there are some considerable rock cliffs along the side; and it is really a rough creek to get up, but it does not appear so from the north side.

Q. Suppose a person starting at Slick Rock creek wanted to go to the highest point that he could reach in the shortest distance he could get to it, would he select the right hand or left hand going up the stream?

A. They would undoubtedly take the right hand and go up the stream.

Q. For what reason?

A. From the general appearance in the territory by view-
423 ing it from the highest peaks on the north side of the river, one can readily see that the main mountain goes around to the right of Slick Rock Creek. In my opinion, Tennessee river cuts through the mountain below the mouth of Slick Rock Creek 2½ miles. A person wishing to go the main mountain, after leaving the creek, would undoubtedly go to the right.

Q. How about the general continuity of the mountain on the right, as you go up Slick Rock Creek to the point of the main divides?

A. I don't understand your question.

Q. Which course shows a clearer continuity of the ridge, on the right or on the left, as you go up the river?

A. On the right.

Q. You stated, I believe, that you used on your surveys a certified copy of the plat of 1821?

A. Yes, sir.

Q. Did you have also with you, at that time, a copy of the report of the Commissioners accompanying that map?

A. No, sir.

Q. When you first commenced the survey?

A. No, sir; I had a certified copy of the map only.

Q. When did you first get a certified copy of the report of which the map was a part?

A. Not until the last suit came up. That is, I read the report before I made a survey from the 101st mile circle northeast.

Q. That is, before the survey of 1910?

A. Yes, sir.

Q. How did you find the general agreement between the report and plat of 1821?

A. It was surprisingly accurate. I made a test of the map and the survey of 1821 with my survey, and the result was surprisingly accurate.

Q. How did the report itself agree in words with the plat of which it was a part?

A. They agreed.

Q. You said that you put that plat to some sort of a test. Please explain what that test was to which you submitted the
424 plat of 1821 in actually surveying the work?

A. The first test I put the map to I would take some undisputed part of the line, some point that could be easily selected—for instance, the Tennessee river—using that as a base I drew a line from those points to the decided break in the general direction of the map, and compared them with the general bearings in my survey; and I found by making those comparisons from the beginning of the survey to the end that the result was surprisingly accurate.

Q. Accurate in accordance with the undisputed and which section of the disputed territory?

A. The North Carolina contention. I also drew a test line from the beginning point to the 59th mile tree, a place easily selected from the map of 1821, and from the 59th mile tree to the south bank of the Tennessee river; and also to the first decided break to the left, which we believe to be Big Fodder Stack, and down to the 86th mile tree from Junction; and also to the 101st mile tree, and compared those general bearings with the bearings I got from an actual survey.

Q. Were those tests to which you submitted the plat of 1821, in making your actual survey, such as are recognized in topographic work?

A. Yes, sir.

Q. Did that plat of 1821, which you had, purport to be an accurate map of the country, or only of the line itself?

A. Just the line itself.

Q. And what it showed of the adjacent territory was put in how?

A. It was just sketched in.

Q. No survey was made for the purpose of locating the outside lines?

A. No, sir.

Q. I see in their certificate of this plat of 1821 the Commissioners who submitted it as a part of their survey certify that it is, "A true and accurate plat of the dividing line between the said states as settled, run and marked by us." Did you find it to be that, as according to the undisputed portion and the North Carolina contention?

A. Yes, sir. This map accompanying the Commissioners' report was made on a very small scale, but it got surprisingly
425 close results in every test I put it to, and in every way. It went right over the old line marks.

Q. Tell us what scale the map of 1821 is?

A. The scale is 800 poles to the inch—$2\frac{1}{2}$ miles.

Q. That would not enable you to find every slight variation in the line?

A. No, sir; you could not determine it with any great degree of accuracy. I believe you can determine—in fact, I have tested it—by undertaking to get as close as possible the deviation shown in the original map of 1821; and determined the bearings of some and by using those bearings, get close enough to the line to find the original marks.

Q. According to the scale I see on this map, Tennessee river is laid down as very broad all along. What would be the width of Tennessee river where the line crosses it?

A. It shows to be a half mile wide.

Q. Is the river that wide there?

A. No, sir; it is not over 300 feet.

Q. What does that indicate?

A. It shows that they didn't take any care with the topography of the plat. They only sketched it in and didn't pretend to show the true width of the river. They wanted to make it appear as crossing the river at that place.

Q. The line was made accurately?

A. Yes, sir.

Q. Is the Tennessee river at any point within miles of that place as wide as is shown on the map of 1821?

A. No, sir, no place that I have seen.

Q. How far below there, according to the North Carolina contention, and how far above are you familiar with it?

A. I have surveyed the Tennessee river from the mouth of Panther Creek, which is pretty near Graham County line, to Slick Rock Creek, a distance of about 28 miles.

Q. What do you know about the river from the mouth of Slick Rock Creek on down?

A. I have only been as far as Tellassee Ford.

426 Q. What is that distance?

A. Nine or ten miles.

Q. Then, when you speak of not knowing any point on the Tennessee river as wide as the scale of the map of 1821 shows, you cover a distance of 38 miles, ten below and 28 above where the North Carolina contention is?

A. Yes, sir.

Q. I discover from this map of 1821, from what is marked "Creek," that the Commissioners after passing Tennessee river and what, according to the North Carolina contention, is Slick Rock Creek, they run some distance up that creek. How far, according to the scale of the map of 1821?

A. About a mile and a quarter.

Q The actually marked line runs how far?

A. Nearly five miles.

Q. How do you account for that discrepancy; the map shows a mile and a half, whereas the trees point out five miles?

A. There might be a number of explanations. One is, possibly, that the man who made the plat was not the man who was there on the ground. That could have been. Another is, that they might have left the creek and didn't take any note of it, and when they went to make up the plat, they indicated that they followed the creek for quite a distance, and they didn't show as far as they ran up the creek.

Q. In which respect is the mistake made, if there be an error in platting the creek, in leaving the general direction from the line or leaving the general direction which the marked trees show?

A. The general direction of the line is correct according to the marked trees and the bearing of the plat.

Q. The creek is sketched in wrong?

A. Yes, sir. You would not suppose it to be right. They never undertook to lay down the streams accurately.

Q. Is there any other stream entering the Tennessee river at the place where Tennessee contends that the line crosses the river?

A. No, sir.

Q. How far would you follow the Tennessee contention
127 in the direction of Hangover, running from the Tennessee river, before you strike a stream at all?

A. How is that?

Q. Would you come to any stream in running the Tennessee contention, running the line southwesterly, would you come to any creek before you got to Hangover, Hayo, Stratton Bald, or Junction?

A. No, sir.

Q. In following the Tennessee contention the first stream that you would come to would be what?

A. The Hiawassee river.

Q. How far is the Hiawassee river from the Tennessee river on that contention?

A. I think it would be about 37 or 38 miles.

Q. Now, I observe that according to this plat of 1821 the state line at the head of Tellico river does not appear to cross the Tellico river?

A. No, sir.

Q. Whereas, in running down the State Ridge you say that you would cross the Tellico river?

A. Yes, sir.

Q. How would you account for the fact that the Tellico River, in its upper branches, was not shown as crossing the state line?

A. That would be a mere matter of opinion.

Q. As an expert in chirography, what would be your opinion?

A. They might never have made any note of crossing the stream at all and when he come to make up the plat for that, having no note of crossing the Tellico river he would not show that at all.

Q. What size stream is Tellico river at the point where you say the state line crosses it?

A. About 40 feet wide.

Q. When you speak of noting it you, you mean contained in the surveyor's notes?

A. Yes, sir.

Q. As a matter of fact, would it be possible to make a plat on this scale to show all the notes for that distance?

428 A. No, sir; I think not.

Q. How does the shape of the line at that point consist with crossing Tellico river?

A. The shape of it is exactly right.

Q. Would it be possible to make that shape in that vicinity without crossing the river?

A. No, sir.

Q. Where did the marked lines go?

A. That went down State Ridge, across the Tellico river and up Jenk's Ridge.

Q. How, generally, did you find that name, State Ridge, used in that country?

A. It is recognized by every body I talked to as State Ridge.

Q. Was there any difference of opinion about it?

A. No, sir.

Q. Do you know the reason for calling it that, by reputation out there?

A. It was because the state line ran down that ridge, I suppose was the reason.

Q. Now, that plat of 1821 locates some things, such as objects on the north side and on the south side of the Tennessee river, where they of any assistance in enabling you to test the accuracy of your work and locate your work according to the plat of 1821 or to discover any dispute between your plat and that work?

A. Yes, sir.

Q. Point that out and show what aid they afforded you?

A. The report given by the commissioners in running the dividing line was, that they began at a stone set up on the north side of the Cataloochie Turnpike road and marked on the west side "Tennessee, 1821," and on the east side, "North Carolina, 1821;" thence running southwest they crossed the summit of the Great Iron or Smoky Mountain and continued southwest on the extreme heights thereof to where they struck the Tennessee river, about seven miles above the old Indian town of Tellassee. They don't show on this map the old Indian town of Tellassa, but they do show the trail which they marked below Tellassee. The report then goes

429 on, "Then crossing Porter's Gap at a distance of 22 miles from the beginning; passing Meig's boundary line at thirty one and a half miles, the Equonettly path at fifty-three miles,—they are both shown on that map, and the 53rd mile post is indicated by their mile circle,—and crossing the Tennessee river at 65 miles from the beginning.

Q. How did your survey tally with that?

A. Our survey didn't extend quite that far. The report goes on, "Crossing the Tennessee river at 65 miles from the beginning." The Tennessee river is shown on the plat and the 65th mile circle is also shown on the south bank of the river. Counting the mile circles from the beginning to the Tennessee river, we find upon this

plat two circles which are very close together, about a quarter of a mile apart. At the 38th mile circle is the place where two mile circles appear very close together. Not having seen the original, this being a certified copy, from my knowledge of handling old maps of this kind I would quickly suppose that there had been an error of some kind made. These two mile circles that are shown close together were intended to show the same mile circle and are shown close together,—shown twice.

Q. Suppose it should develop that the original plat is in two parts, and that a circle is shown at the end of one part and another and similar circle at the end of the other part, would that be anything unusual in chirography?

A. No, sir. If the original map was in two pieces those two circles undoubtedly were intended to be the same; if it appears that there is one circle at the end of each piece, and they both should be counted as one—counting from the beginning to the Tennessee river, counting only one circle, the line would cross the Tennessee river at the 65th mile circle, as is shown in the report. From there, "From the Tennessee River to the main ridge and along the extreme heights of the same to the place where it is called the Unicoy or Unaka Mountain, striking the old trading path leading from the Valley Towns to the Overhill Towns, near the head of the West Fork of the Tellico River and at the distance of ninety-three miles from the beginning." You can see there upon the plat that they do
430 show the trail which strikes the map at the ninety third mile from the beginning. This blue print spread out before me was made from a certified copy of the original map.

Q. Now, this blue print that you were speaking of last was made from what?

A. This blue print was handed to me, together with a tracing, by Mr. Cozad about two years ago. This blue print was handed to me, together with the tracing, about two years ago.

Q. How did it compare with the tracing handed to you?

A. It is exactly right.

Q. Was the tracing certified or not certified?

A. It was a certified copy of the original plat of 1821.

Q. It purports to be a copy of the survey certified by John W. Morton, Secretary of State of Tennessee, with the great seal of the State of attached. Was that on the original certified copy of the tracing?

A. That is my recollection.

Q. How does that show the line to strike the trail at the ninety-third mile?

A. It indicates it exactly right. The miles circles show that it strikes the trail at the ninety-third mile.

Q. Did it strike the trail there?

A. Yes, sir, there is an old trail there.

Q. You followed it for some distance?

A. Yes, sir.

Q. How was the trail coming to the mountain you were traveling, and from what direction, when you first struck it?

A. I know very little about the trail. At the time I was there I was not making any investigation of any trail leaving the mountain at any great distance; but there is an old trail leaving the mountain between the ninety-third and the ninety-sixth mile, or has that appearance to me.

Q. At the other points you didn't find that trail?

A. I didn't make any investigation.

Q. Assuming that to be the trail mentioned, it would coincide with the call?

A. Yes, sir.

431 Q. Does the purported copy of this same map of 1821, which is appended to the answer of Tennessee as an exhibit, show that portion of the trail which lies to the south of the mountain there?

A. No, sir it only indicates a trail coming up to the ninety-sixth mile, but it don't indicate where it leaves.

Q. It is not noted between the ninety-third and ninety-sixth mile?

A. No, sir.

The plaintiff offered in evidence the plat just testified to by the witness, marked "Exhibit No. E, with evidence of D. B. Burns filed before me this 8th July 1910, Edmund B. Norvell, Comr."

(Here follows map marked Exhibit No. E.)

Q. Now, Mr. Burns, what did you do towards applying a test at the 101st mile tree?

A. Do you mean, to satisfy myself as to whether it was the 101st mile tree?

Q. No, sir. To test the map of 1821 at the 101st mile tree?

A. I tested it by getting the bearing from the 59th mile tree to the 101st mile tree by the original plat of the Commissioners of 1821, and also by the actual bearing given by my survey. The bearing given on my plat is South 49° 35′ West. The bearing I got from the original plat is, South 49° 30′ West, a difference of only 5 minutes.

Q. How did you know that was the 101st mile station?

A. They speak in their report of the Unicoy Turnpike Road, and from that point they turned South, so I ran a southerly line from the Unicoy Turnpike Road and found the original marks. I followed the line a little more than a half mile and blocked a fore-and-aft tree. From that investigation I was thoroughly satisfied that it was the 101st mile tree, because they spoke of reaching that point in their description, and from that point they turned South.

Q. Now, Mr. Burns, taking the observations you have made of the state line, between the points you say have been along, where it is undisputed, and the state line as contended for by North Carolina, at the various points where there is a dispute between the two states as to its location, what would be your opinion as to where that line was located by the Commissioners in 1821 along the points
432 where a dispute exists between the two states?

A. Following down the Smoky Mountain, along the undisputed section to the Tennessee River, after crossing the Tennessee River, the line undoubtedly follows up Slick Rock Creek to the Big Fodder Stack lead, a distance of nearly five miles from the mouth of the creek; following up to Big Fodder Stack and over Big Fodder Stack along the main mountain to Junction; from Junction around John's Knob, Hawe Knob, Laurel Top and other big peaks; from Laurel Top, it runs down State Ridge, crossing the Tellico River and up Jenk's Ridge, following the main mountain, passing over Beaverdam Bald to the Unicoy road, from which point it turns South.

Q. If a person was being led by the natural configuartion of the country, from where you began, in the direction of the Tennessee river, on towards the Georgia line, what would be the natural way for him to go from what presents itself to him? The route you have described?

A. I think there can be no doubt about that. In going down the Smoky Mountain to the Tennessee river, Big Fodder Stack is in almost a direct line. The Slick Rock Basin looks like it is very easy to get up, and not as long as it is. In view of the fact that Fodder Stack can be seen from the main mountain, I think that point would have been selected from a point back on the Smoky Mountain. After reaching that point, and following the main top of the mountain till you reach Laurel Top, and after getting to Laurel Top, the ridge is known as State Ridge, and has every appearance of being

the main top of the mountain. Unless one was familiar with the country, he would not think he was crossing the main water shed, at the point called County Corners. The most natural way for one to go would have been to cross Tellico river and up Jenk's ridge.

Q. Suppose you approach the question from the stand point of the marked trees which you found, what would be your conclusion from that stand point as to whether in 1821 that was located as the state line?

A. The marked trees take you over exactly the route I have described. From the marked trees, I would say that the state line follows around the route I have just described.

433 Q. Suppose you approach the question from the stand point of the plat of 1821, what, in your opinion, as an expert, would that line cause you to do as to adopting or rejecting that line which you say the trees and the general contour of the country indicate?

A. By taking the plat around, starting at some undisputed point which can be located upon the plat, and also upon the ground, and using the plat alone as your guide, you can get close enough to the original marks to find them, and you can follow the line in that way, using the plat as your guide. If you take the plat, together with the report which accompanied it, any intelligent engineer or surveyor can follow the line in the disputed as well as the undisputed section. I have been over it.

Q. What, then, would indicate the line at the points of contention?

A. Taking the two together, they would indicate the line up Slick Rock Creek to Big Fodder Stack, up to Laurel Top, down the State Ridge, crossing Tellico, up Jenk's Ridge to Jenk's Knob; thence around the main mountain to the Unicoy Turnpike Road.

Q. Do you know anything, from anything contained in that report of 1821, or the plat of 1821, from what you observed and discovered in making your survey between the points which you did survey, that would militate against the North Carolina contention as to the location of that line?

A. No, sir. Everything goes to bear it out.

Q. Do you know of anything, from any of those sources, that would tend to support the contention of the State of Tennessee as to the location of that line where there is a controversy as to location between the two states?

A. No, sir; I do not.

Cross-examination.

By T. E. H. McCroskey, Esq.:

Q. Mr. Burns, I desire to know a little more about the large map which you have filed; and, first, I will ask you what distance these squares represent in rods or miles?

434 A. They represent 5,000 feet, which would be a little less than a mile.

Q. This map is on a scale of what?

A. 2,000 feet per inch.

Q. In inches, how much does a square represent?

A. 2½ inches.

Q. Then each one of those squares represents 2½ inches or 5,000 feet,—280 feet less than a mile?

A. Yes, sir.

Q. Approximately then, each one of those squares represents a mile?

A. Yes, sir; for rough comparison.

Q. You have indicated ridges on the map, showing, among other things, Big Fodder Stack and Little Fodder Stack, and also Junction. That represents as I understand Fodder Stack Lead or Ridge?

A. Yes, sir.

Q. Then continuing on North and East, as I understand, you undertake to show the continuation of the ridge?

A. You mean over Little Fodder Stack?

Q. Yes, sir.

A. I surveyed the main ridge from Big Fodder Stack to Stiff Knee, and surveyed the ridge going down in a northeast course, about two miles, to the Forks, one coming in to the lower falls at Slick Rock and one butts off at the mouth of Slick Rock. The last half mile, which is a straight dotted line, is what I understand as old section line, and does not indicate the top of the ridge.

Q. You followed the ridge down Slick Rock Creek to the Tennessee River.

A. No. From the Section line, I didn't go on the top, nor I didn't go down the fork to the North of Slick Rock Creek.

Q. In other words, there is a space that you didn't survey?

A. Yes sir. I didn't survey from Slick Rock the Lead leading up to the main ridge.

Q. Passing over the other side of Slick Rock, you represent from the Junction, going North or Northeast, first Stratton Bald, next Hayo, and next Hangover.

435 A. Yes, sir.

Q. I understood you, from your testimony in chief, that Hangover Ridge extends in a northeasterly course to Cheoah River.

A. No, sir. I didn't indicate that Hangover went that way; I meant to say that the main Ridge extends from Hayo to Cheoah River.

Q. The main Ridge is the one you ran between Deep Creek and Rock Creek?

A. Yes, sir, and the waters of Santeetlah.

Q. That is what you would call the Main Ridge?

A. Yes, sir.

Q. Which is the Higher, Hangover or Hayo?

A. Hayo is two hundred feet higher.

Q. How much higher is Hayo than Big Fodder Stack?

A. I suppose it is six or seven hundred feet, that is my recollection.

Q. How much higher is Hangover than Big Fodder Stack?

A. About five hundred feet.

Q. How much higher is Stratton Bald than Fodder Stack?

A. Stratton Bald and Hayo have about the same elevation, about seven hundred feet higher than Fodder Stack.

Q. What you have marked as Junction is the Junction as I understand of Fodder Stack and Hangover Lead.

A. Yes, sir.

Q. Have you been there and taken particular notice of the topography of the country?

A. Yes, sir. I never took any topography except by an observation of the slope of the mountain.

Q. At that point where Fodder St-ck starts, you have to go down the slope of the mountain before you reach Fodder Stack Lead?

A. Yes, sir. Along the Ridge all the way from Junction down.

Q. Standing at the place of Junction or the place where you leave the top of the mountain to go down the mountain, you cannot see Fodder Stack Lead at all?

A. Do you mean standing right at the Junction.

Q. Yes, sir.

436 A. I believe you can see Big Fodder Stack from there, but I am not positive.

Q. I am not speaking of Big Fodder Stack; I am speaking of that Ridge immediately joining Hangover.

A. Yes, sir, the Ridge leading down from Junction.

Q. Is it not a fact, Mr. Burns, that a stranger going into that section, going either southwest or reversing and coming Northeast, passing over that particular place, he would not see or understand where Fodder Stack Lead leaves the main Ridge unless he had someone to point it out to him?

A. If he approached from the southwest, he could readily tell; if he approached it from the Northeast, there might be some difficulty.

Q. Well, approach it from the southwest?

A. Do you mean approaching from Big Fodder Stack?

Q. I am speaking when you immediately leave the Forks and go down from Fodder Stack?

A. Then you are approaching it from the Northeast.

Q. I mean coming down from the southwest?

A. Which way to you mean?

Q. From the Tellico River?

A. There might be some doubt after he got to Junction in ascertaining which would be the main Mountain.

Q. As a matter of fact, can there be any doubt about Hangover being the more prominent at that particular point, than Fodder Stack?

A. The highest Peak at that particular point is Stratton Bald.

Q. At Junction, how much higher is it there at that point than Big Fodder Stack?

A. I don't know. It would be mere guess work. I think it is about three hundred feet; there is a considerable drop from Stratton Bald to Junction.

Q. There is a drop of from three hundred to five hundred feet?

A. You mean from Stratton Bald to Junction?

Q. Yes, sir.

437 A. Something like that.

Q. Following the Hangover Lead from that point, going northeast, it continues to rise?

A. It continues to rise until you get to the top of Stratton Bald.

Q. You found some gaps between there and Hayo?

A. Yes, sir.

Q. Taking the general trend of the country, it continues to rise till you get to Hayo?

A. No, sir; but it keeps up about the same elevation. Stratton Bald and Hayo being about the same elevation.

Q. You think Stratton Bald is about the same height of Hayo?

A. I did know at one time. They are about the same elevation.

Q. Following the main Ridge, as you have indicated on your map, leading from Hayo, is that quite prominent till you get down near the Cheoah River?

A. Yes, sir, very decidedly; it keeps up its elevation till you get down close to the River. When you get two miles from Hayo, passing a little north of east, it still holds its own height. It keeps up well but continues to drop after you leave Hayo.

Q. As I understand, that Ridge is distinct from Hayo?

A. Yes, sir.

Q. And Hangover turns to the left and runs in the direction of Tennessee River.

A. Yes, sir.

Q. And Hangover, as I understand you, is about two hundred feet lower than Hayo.

A. Yes, sir. Really, Hangover and Hayo might be termed one Peak. They have the same appearance as Big Fodder Stack, except they are a little farther apart.

Q. How far apart?

A. Little over a quarter of a mile.

Q. The depression, between the two is about how much?

A. Not very much. There is a drop down from Hayo, called Saddle Tree Gap.

438 Q. There is a considerable drop from Hayo down to Hangover?

A. About two hundred feet.

Q. Continuing down the Hangover Ridge, it falls rapidly till you reach Cold Spring Gap?

A. Until you get to Big Fat Gap, this is the gap before you reach Cold Spring Knob.

Q. Cold Spring Knob is another elevation on this Hangover Ridge?

A. Yes, sir; that is the most decided elevation between Hangover and the River.

Q. How high is it?

A. I really don't know.

Q. Then it continues to fall till you reach the Tennessee River?

A. Yes, sir.

Q. In some places the fall is more abrupt than in others?

A. Yes, sir.

Q. Now coming back to your survey, as I understand from your testimony, you didn't survey further than the State Road north of the Tennessee River?

A. No, sir.

Q. Some other party made the survey beyond that point?

A. Mr. S. S. Gannett, surveyed that.

Q. Is he here?

A. Yes, sir.

Q. How far is it from the State Road to the Tennessee River by your survey?

A. About three miles and a half.

Q. Did you survey that yourself?

A. Yes, sir.

Q. Did you have a compass and chain?

A. I had a transit and chain.

Q. Do the marks on the map from the State Road and the Circle show the different calls of your survey?

A. Yes, sir. In a general way.

Q. What do you mean by "In a general way?"

439 A. You take the distance as a whole from the State Road to the Tennessee River.

Q. I am talking about your survey? Did you show it exactly as you made the survey?

A. Yes, sir, it is as accurate as it can be platted.

Q. Why are the calls not accurately platted?

A. They are.

Q. Then they are accurately platted, and the map is exactly correct?

A. Yes, sir.

Q. Does the ridge wind considerably?

A. It is just as it is represented on the map.

Q. I notice from the third call from the State Road, running toward the River, you have a straight line for perhaps a quarter of a mile. Is the ridge perfectly straight at that point at the top of the Ridge?

A. I tried to run the Ridge as close to the top as I could without being too exact, so that the map practically represents the top of the ridge. As a matter of fact, no surveyor would run with every little meander that the mountain made.

Q. You don't mean to say that the Ridge is as straight as the line projected on your map, but that is approximately right. Is that correct?

A. If you get down to that fine a point, yes, sir, the map is correct and represents the top of the ridge as close as it can be represented on a scale of that size.

Q. Each one of those circles and angles shows the top of the ridge all the way through till you reach the river?

A. Yes, sir.

Q. Did you take that line, or could some other surveyors take

that line as you have located on the map there, and with that go to the State Road and run a line by your map or plat around there?

A. Any competent man could, yes, sir.

Q. And he could follow it exactly?

A. What do you mean by the word "Exactly."

Q. The line you have platted here?

440 A. He might not get the distance that I showed there in lengths of hundredths or ten thousandths of an inch, but it would be close enough to follow the Ridge, and find the marks.

Q. As a matter of fact, could he follow that line unless he had your calls?

A. Yes, sir; he could start at some known point on that line and give him my map he could certainly trace the line as I have shown it to you.

Q. Taking the map of 1821, at various places it shows a tangent on the line, without any drops from various points.

A. Yes, sir.

Q. In several places it shows that?

A. Yes, sir.

Q. Both North and South of the Tennessee River.

A. Yes, sir.

Q. Do you understand that a surveyor in running and locating the State line would run a straight line when he followed the top of the mountain?

A. No, sir. I would like to explain that question. The Commissioners of 1821, as shown by their report, ran the entire line from Pigeon River to the Georgia line, a distance of a hundred and sixteen miles, two hundred and twenty-three poles, as shown by their plat. They said they assembled at Newport, Tenn., and made their report and signed the report and plat at Knoxville, Tenn. Of course, it is a considerable distance from the Georgia line to Knoxville, and it required a good deal of time to travel that distance. They made the survey after leaving Newport, and got back to Knoxville in forty-seven days. Then, if we take from that the time which they were not permitted to work on account of rain and dense fogs in these mountains for several days, we could be forced to the conclusion that the time spent upon that survey on the ground was not very much. Of course, they would do it the quickest way they could, and take the shortest cuts they could. As a matter of fact, the land was not very valuable, and they thought, if they had a marked a line which would enable you to follow their marks, they had done their duty. As a matter of fact, in following along the ridge, they didn't show, nor didn't attempt to show, every

441 nook and turn in the Ridges. They sighted from the highest point, sometimes it would be a mile and sometimes not so far; but, in chaining and marking, they did actually follow around the ridge, and in their platting they showed the distance from one high point to another high point straight, but they actually measured around and adopted the line on the top of the ridges along which they marked, also the marked trees can be found now. Of course, a slight deviation from the line might not be shown, and when

they came to make their plat, they platted a straight line. That is my opinion, and I think I have sufficient reason to lead me to that conclusion.

Q. Then, the line platted on the map does not show exactly the turns that they made. Is that correct?

A. The map shows that they followed along the top of the ridge, and if you follow the teaching of the map, you must follow the top of the ridge, where the map shows that they followed the ridge, and you can folllow close enough to the top of the ridge, using their bearings to enable you to find the marked line.

Q. So there can be no dispute about the question that the commissioners, in locating the line north of the river, they followed the ridge to-wards the Tennessee River?

A. No, sir; I think there can be no doubt about that.

Q. The map shows that they followed the top of the ridge?

A. Yes, sir.

Q. And they followed it till they reached the river?

A. Yes, sir.

Q. And you think there can be no possible question in regard to that?

A. No, sir.

Q. You say you found on the north side of the Tennessee River a fore-and-aft tree?

A. Yes, sir.

Q. That fore-and-aft tree was pointing directly toward the river?

A. It was marked for a fore-and-aft tree for the line going that ridge, and also in the direction that they came to the river and the direction that they crossed the river.

Q. It showed the direction they came to the river, and was
142 marked on the other side, showing the direction that they crossed the river?

A. It was marked for a fore-and-aft tree for the line going that way. The fact, is they didn't attempt to show any corners of their survey. If they had attempted to show any corners at any point, they would have marked the line the way they approached and the way they left. In this case they marked the fore-and-aft tree in the direction that they came to the river. If they were going down the river, they whould have marked a tree as a corner tree. They marked the tree as a fore-and-aft tree.

Q. Mr. Burns, I prefer that you answer my questions, and leave the arguments to the attorneys on the other side.

A. I don't want to do anything that is not perfectly right.

Q. Answer my question again. As I understand, this last tree showed marks as they approached it?

A. Yes, sir.

Q. And it showed fore-and-aft tree on that side?

A. Yes, sir, the side had been blocked, but I think it was the original mark.

Q. Directly opposite that, they showed marks on the other side as a fore-and-aft tree?

A. Yes, sir.

Q. Following that line directly, it would carry you to the river and still following it directly it would carry you across the river?

A. Yes, sir.

Q. When you reached this point, I notice you followed down the river by your marked line for half a mile on the North side to the mouth of Slick Rock Creek?

A. Yes, sir.

Q. Do I understand you to say or insist that the Commissioners followed down the river and adopted that as the state line?

A. I think that is undoubtedly the way they measured and marked the line.

Q. That is not answering my question directly; do I understand you to insist that they adopted that line as made by themselves or is that the line you adopted?

443 A. I think that is the line they adopted.

Q. Then I understand you to say that they went down to the river to this fore-and-aft hemlock, and then followed down the river to the mouth of Slick Rock Creek, and that that was adopted by them as the line?

A. Yes, sir.

Q. And that they crossed the river to the south side of the mouth of Slick Rock Creek?

A. Yes, sir.

Q. Your deposition was taken at Knoxville in the case of W. R. Hopkins, vs. Charles Hebard and others, in the United States Circuit Court in May 1908?

A. Yes, sir.

Q. And that litigation was a contention over the location of this particular state line, and this particular point?

A. Yes, sir.

Q. And you were testifying particularly with reference to the location of the State line as it approached the river from the North side?

A. Yes, sir, that is my recollection.

Q. In your deposition in that case, didn't you insist that the Commissioners, from a mile or probably further back north from the river, didn't adopt the line as you have now shown on this map, but that they adopted a straight line from a mile North of the river direct to the mouth of Slick Rock Creek; and didn't you, in that case, insist that the projected line was the one adopted by the Commissioners?

A. We projected a line on the north bank of the Tennessee river to the mouth of Slick Rock Creek, on the same bearing we ascertained from the Commissioners' map, to the point where it intersects the line surveyed by me; but I have no recollection of that being the line, or saying that that was the line adopted by the Commissioners. I did insist, and do insist yet, that the line was sighted back from the smoky mountains to about one mile from Slick Rock, from which place you can see Slick Rock Creek. As I stated awhile ago, the commissioners sighted between prominent parts, and I

believed that they sighted to Slick Rock from back on Smoky
444 Mountain. I think the line was platted according to the way they sighted. I don't think I insisted in that deposition that that was the line they adopted. I insisted that the line was measured and marked to be the State line.

Q. The map of 1821 shows that they crossed the river, and its tangent has one line projecting out to the south bank of the river, does it not?

A. Yes, sir.

Q. Then according to the map you now file, showing that they followed down to the river in that direction, the map of 1821 is not correct is it?

A. I don't know hardly how to answer the question. The map of 1821 shows a straight distance which they sighted but it doesn't show the deviations I show. In that much it is not correct.

Q. After crossing the river, it shows that they followed the ridge, just as they did on the North side?

A. No, sir; it indicates to me that they followed the stream about a mile and a half, and then followed the ridge.

Q. What is the sketching on the northwest side of the line indicated near the Tennessee River?

A. I am not able to answer that question but I think they were attempting to show the foot of the Ridge.

Q. The sketchings in every other respect are intended to show ridges or mountains?

A. That is what I think.

Q. The sket-hings of the other places shown indicate mountains or ridges?

A. Yes, sir.

Q. Then why would not the sketching here show a mountain or ridge?

A. Because it clearly shows that a stream was between.

Q. The map of 1821 shows that it followed up a stream immediately after crossing the Tennessee River, about a half a mile, and then they go up the stream a short distance and then run back the stream a short distance and then leave the stream?

A. Yes, sir.

Q. It does not show that they crossed the stream at all?
445 A. No, sir.

Q. It does show that running up with the creek or stream, it runs parallel for approximately a half mile, then it strikes on out from a sharp angle or creek for probably a quarter of a mile.

A. Yes, sir.

Q. Then it turns at right angles and runs to the creek?

A. Yes, sir.

Q. Then it turns again at apparent right angles and leaves the creek.

A. Yes, sir.

Q. And from there, it keeps going further and further away from the creek?

A. Yes, sir.

Q. And it shows that they are following the ridge continuously from that point till they reach Hiawassee River, as you have already stated.

A. Yes, sir, from the point where they left the Creek.

Q. Coming back to your map, if I understood you in your testimony in chief, you indicated by giving the number of the various trees that you examined personally?

A. Yes, sir.

Q. If I understand you correctly, you didn't make any examination of tree number thirty.

A. No, sir. We were in somewhat of a hurry when we went along there. I searched carefully for marks and found one tree coming to Slick Rock that I thought had State marks on it; but I don't recollect what kind of a tree it was. I have a distinct recollection that we had some doubts about the marks being State line marks.

Q. You do remember that you found the tree marked, and that you had some doubt about their being State line marks?

A. I was pretty positive that they were State line marks, but I wasn't absolutely sure, and I didn't take any notes of the trees.

Q. Among those trees which you examined personally, you gave number twenty-nine and number thirtyone?

A. Yes, sir.

Court adjourned until 2 p. m.

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2 P. M. JULY 8, 1910.

Court reconvened, the same parties being present as at the forenoon session.

Cross-examination of D. B. BURNS resumed by T. E. H. McCROSKEY, Esq.:

Q. After crossing Tennessee River, at the mouth of Slick Rock Creek, I notice on your map some distance up from the mouth of the creek No. 3, when was that block taken out?

A. I was not present when that block was taken out. It was taken out by Mr. Denton in August before I was there. He was with me when I made my survey up Slick Rock Creek. He also introduced the block at the same time I introduced the other block. I have seen the block and attempted to count it, but I didn't see the tree when it was blocked.

Q. This block was taken out before your deposition was taken at Knoxville?

A. Yes, sir.

Q. Were all of those other trees blocked before your deposition was taken in the case of Hopkins vs. Hebard and other or have they been recently blocked, or if they were blocked, which ones?

A. All of the trees set out on that map except block No. 3 were taken out in April 1908, and I was present when they were taken out of the trees.

Q. They were all taken out before your deposition was taken in the other case?

A. Yes, sir.

Q. And since the taking of your deposition, you have taken out no blocks?

A. Yes, sir, Block No. 10.

Q. Have you made more than one survey up Slick Rock?

A. Only one.

Q. That was made before your deposition was taken in May 1908?

A. Yes, sir.

Q. And you have never been in that territory for the purpose of making a survey since that time?

447 A. Yes, sir, I surveyed down the Tennessee River and also the Cheoah river.

Q. I am speaking of the Slick Rock basin?

A. No, sir.

Q. The marked trees that you have indicated on the large map that you have here filed are the same marked trees that you found when you made your survey in 1908 up Slick Rock Creek?

A. Yes, sir.

Q. I notice, following up the creek, that you have tree No. 45, block No. 5, below the mouth of Little Slick Rock Creek, and then I notice no other marked trees till you reach the foot of the ridge at tree No. 46, some three miles up the creek. Is that correct?

A. Yes, sir, I didn't find any more after Block No. 5 until we reached Big Fodder Stack Lead.

Q. Was there plenty of timber in that space of three or more miles sufficiently large to have been marked in 1821 to show State line marks?

A. Yes, sir.

Q. I notice, further, that, following up the Creek, from its mouth to tree No. 45, Block No. 5, that a number of trees are indicated as marks, some on one side of the creek, and some on the other, is that correct?

A. Yes, sir.

Q. The first tree at the mouth of the creek, or below the mouth, near the river, is how far from the mouth of the creek, the first tree after crossing the river?

A. It is a little less than one hundred feet, about five poles from the south bank of the Tennessee River and the mouth of Slick Rock Creek.

Q. It is about a hundred feet from the river and a hundred feet from the mouth of the creek; is that correct?

A. Yes, sir. In going up Slick Rock Creek, on the south bank, it is a little less than a hundred feet from the river.

Q. How far from the Creek?

A. Possibly ten feet, I should say, maybe more and maybe less.

Q. What kind of marks are on it?

A. All of those trees are described in detail on this sched-

448 ule; that tree was formerly blocked by Mr. Hayes, when he was in there.

Q. There were no blocks at all on it that you remember?

A. No, sir.

Q. On which side of the tree with reference to the creek and river was it blocked?

A. My recollection is that it was blocked on the side facing the creek.

Q. Are you positive about that?

A. Yes, sir; I am pretty positive.

Q. The next two trees appear to be thirty-two and thirty-three on the opposite side of the creek; do you remember them?

A. It is impossible for me to remember the exact position of every tree I located. I can only refer to my notes.

Q. So that, Mr. Burns, you have no recollection of the tree at all, but have to refer to the memoranda you made at the time; is that correct?

A. Not wholly; I remember a great many of the trees.

Q. I am speaking about trees thirty-three and thirty-two; what is your personal recollection of them?

A. Tree thirty-three was located by Mr. Gannett.

Q. What do you remember about three thirty-two, personally, without referring to the notes?

A. My recollection of the tree is that it was a water birch.

Q. On which side of the tree is it marked, and with what kinds of marks.

A. If you confine me to my recollection altogether, my recollection is that the tree was standing on the left-hand side as you go up, and marked as a side-line tree, facing the creek.

Q. Refer to your notes in regard to tree No. thirty-two?

A. It is a water birch, eighteen feet, to the left—and marked with a blaze and two hacks fore & aft.

Q. On which side of the tree did you find the marks?

A. As I remember the marks were quite plain.

Q. On which side of the tree.

A. It was marked as a fore and aft tree, facing down the
449 stream and up the stream as well.

Q. It was marked both showing up the stream and down the stream?

A. That is my recollection.

Q. Numbers thirty-six, thirty-seven and thirty-eight, do you have any recollection about either one of those trees?

A. My recollection of tree thirty-six, I believe that is tree Block No. 3.

Q. What kind of marks did it have on it?

A. It was blocked out.

Q. Some of the trees are marked with three hacks facing the creek and some marked with three hacks facing from the creek are they not?

A. I don't remember any with three hacks, facing from the creek. My recollection is that all the trees were marked as side line trees facing the creek. There are one or two fore-and-aft trees marked going up the creek.

Q. Do you remember having seen any side line trees marked facing from the creek?

A. No, sir.

Q. You do remember that there were none such?

A. No, sir; I am not positive about my recollection of the trees facing the creek.

Q. You found them on both sides of the creek?

A. Most of them were on the left hand side as you go up.

Q. Up to the mouth of Little Slick Rock Creek, what is the character of the stream or gorge? were they rough or easy surveying? Pleas- explain that fully.

A. I surveyed for the most part crossing and recrossing the stream a number of times. It was possible for us to cross the creek in most every instance by jumping from one stone to another. The creek in general is rocky and rather rough. As I stated awhile ago, it was a kind of a gorge.

Q. Is it not exceedingly rough, Mr. Burns, and very difficult to get up and down the creek?

A. It is about like all other mountain streams, not exceedingly rough but pretty rough. It is possible to go up and survey
450 a line up the creek by jumping from stone to stone when the creek is at a low stage.

Q. In some places you were compelled to cross the creek in order to get up; you could not follow the creek all the way up on one side?

A. There are a few places that it would not be possible to get up. In running my line I picked out the easiest route I could.

Q. After passing the mouth of Little Slick Rock, and up to the spur coming down from Fodder Stack, is it easier or rougher as you go up?

A. The creek in general is about the same way. There are a few places above the mouth of little Slick Rock that are exceedingly rough and others that are not so bad.

Q. Are there any places below the mough of little Slick Rock creek exceedingly rough as you term it?

Q. Yes, sir, there are a few places just as rough as the places above the mouth of Little Slick Rock.

Q. You say you found no marked trees from Block No. 5 below the mouth of Little Slick Rock Creek until you got to the foot of the ridge, leading up to Big Fodder Stack?

A. No, sir, I didn't find any marked trees in that space.

Q. Do you know where what is called Forked Ridge comes down to Slick Rock Creek?

A. I think that is the ridge leading up to Little Fodder Stack.

Q. That is called Forked Ridge?

A. I am not positive about it, I think it is.

Q. Mr. Burns, do you insist that the Commissioners followed directly up Slick Rock Creek, from the Mouth of Little Slick Rock to the foot of the Ridge, leading down from Fodder Stack, and made the survey in that way?

A. I don't think there is any doubt about that. There is no doubt in my mind but that they surveyed right up the creek.

Q. Why didn't they make the line there?

A. That would only be a matter of opinion. It might have been

that they got tired climbing up the creek. Of course, it is more accessible on the side of the mountain. After marching a
451 few miles or travelling in that way they might not have deemed it necessary to keep marking till they got to where they left the water course, which would naturally leave the impression that they intended the creek to be the line, after marking or travelling to the place at which they left it. Whether they followed along in the creek, I am not able to say; I believe though that they intended it to be the line. In fact, the original map of 1821 proves it clearly.

Q. If you, as a surveyor, had run the line from the hemlock on the north bank of the Tennessee river a half mile above Slick Rock creek, and from that point down the river a half mile, and then crossed the river at this point, and run up the creek for five or five and a half miles, as a surveyor, in making up your report of the line, would you not have noted the fact, that you did so?

A. Yes, sir; I would have done as I did on this map. I noted that and showed it on this plat.

Q. From your experience all competent surveyors do likewise.

A. Yes, sir; as far as I know they do.

Q. And if they were running down the stream for half a mile in projecting the map or plat, they would hardly show that they run diagonally across the stream, but would rather show that they did run down the stream. In other words, you did that on your plat?

A. I tried to show on my map as correctly as I could, the stream.

Q. On your map if I understand, the dotted or projected line half a mile above Slick Rock Creek on the southside shows what you understand to be the contention on the part of the State of Tennessee?

A. Yes, sir.

Q. It shows the line as you understand and as you ran it?

A. Yes, sir.

Q. It also shows the line after crossing the river and climbs what we call "Hangover Ridge." Is that correct?

A. Yes, sir.

Q. How far is it, from the Tennessee River to Big Fat Gap?

A. Do you mean in miles?

Q. Just give it to me approximately?

452 A. It is a little less than four miles.

Q. How far is it from the river to Cold Spring Knob?

A. About three and a half miles, approximately.

Q. Have you ever followed any part of the Fodder Stack Lead, going north or northwesterly, after passing what is called Stiff Knee?

A. No, sir.

Q. You don't know the character of the Ridge, following on further to what is called "Salt Spring Mountain"?

A. No, sir.

Q. Stiff Knee is as far as you ever went?

A. Yes, sir; that is as far northwest as I have gone.

Q. Do you know anything about the country on the west or

southwest side of the Fodder Stack Lead, between Junction and Big Fodder Stack,—that is, the head of the Stiff Knee Creek section?

A. I have never been down that far.

Q. After reaching the Junction on to Fodder Stack and Hangover, and following still further southwest, you are on the main divide?

A. Yes, sir.

Q. And the extreme heights of the mountain?

A. No, sir.

Q. What is the extreme height?

A. The highest point is not on the main divide. Huckleberry Knob, which is on a spur to the main mountain, leading out between Haw Knob and Laurel top, extends back north, is the highest peak in that whole country.

Q. The line Southwest does show that fact well?

A. Yes, sir.

Q. And it shows that continuously till you reach the Hiawassee River?

A. Yes, sir.

Q. Referring to your map, I notice on the North Carolina side, you have marked, after passing Slick Rock Creek, Santeetlah, and the next is Buffalo, and the next is Snowbird, all of which head under what you understand to be the State line on the North Carolina side, is that correct?

A. Yes, sir.

453 Q. And before reaching Tellico River, all of the waters of the Citico Creek and its tributaries are on the Tennessee side; is that correct?

A. Yes sir, that is correct. In answering that question I mean the waters of Citico Creek from the divide between Citico and Tellico.

Q. Now, as I understand, in addition to that, the headwaters of the North prong of the Tellico River, as you understand the line, is also in Tennessee?

A. No sir; the state line as I understand crosses the head of Tellico River. To be plain about it, I am not familiar with the waters of Tellico River. All I know about it is the part in dispute between North Carolina and Tennessee.

Q. Mr. Burns, do you not know, as a matter of fact, that the head of Tellico River is divided into three prongs, the north, south and middle prong? Are you familiar enough with that part of the country to answer that question?

A. I have heard of the west prong of Tellico, and I think I have heard of the other prongs you mentioned, but I have never been in that vicinity, except on the part in dispute.

Q. The west prong of Tellico River is mentioned in the report of the Commissioners of 1821?

A. Yes, sir. They pass that at the ninety-third mile.

Q. Do you know that the north prong of the Tellico River heads up at what is called John Stratton Creek?

A. Yes, sir, one prong heads up there.

Q. That prong is not in dispute?
A. No, sir.
Q. That prong that is not in dispute is on the Tennessee?
A. Yes, sir.
Q. Passing further southwest from the Stratton Bald, from the head waters of that part of the Tellico River, you come to that part of what you say is State Ridge. How far is that from Stratton Meadows?
A. Do I understand you to mean following around the top of the mountain?
Q. Yes, sir.
454 A. And you mean the Stratton Meadows is the John Stratton Meadows?
Q. Yes, sir.
A. Roughly, it is three miles.
Q. The map of 1821 shows that the Commissioners passed around the head of Tellico river?
A. Yes, sir. Well, I wish to explain that question; the course of the map of 1821 undoubtedly crossed and the marks show clearly that the line crossed the Tellico River, but they didn't show the stream on their plat.
Q. The map itself, however, showed that they passed around the head of Tellico River?
A. The plat does not show it. The topography does,—I mean the plat or a certified copy of it shows the line going that way. The topography does not show the line going through that way, but the plat does.
Q. Well, the plat itself shows that they run through or across the Tellico River?
A. You take the plat and locate the eighty-sixth mile circle, and starting at the eighty-six- mile tree, on the ground, and taking the general course of the plat for five miles toward Laurel Top, or towards the Northeast, you can readily retrace the old marks or old lines.
Q. Does the plat itself show the line crossing Tellico river. I mean, looking at the map itself?
A. That plat is one thing and the topography is another. The plat, within itself, is remarkably accurate; and if you undertake to follow the plat from any known point, it will take you across the Tellico River, but the topography is sketched on the map, and does not show the line crossing Tellico River.
Q. Does anything on the map itself, looking at it without thinking anything about that section of the country, indicate that the line crosses Tellico River?
A. Debarring me from the information I know of that country, it does not show it.
Q. Does it not show that the line goes around the head of Tellico River?
455 A. It does not show Tellico River.
Q. Taking the map without thinking anything about the section of the country, and presenting it to you for your opinion,

does it not impress you with the fact that the line does go around the head of Tellico River, not considering what you know of the topography of the country personally?

A. Certainly.

Q. In the report of the Commissioners, among other things, they report "From Tennessee River to the main Ridge and along the extreme height of the same, to the place it is called Unicoy or Unika Mountain, striking the old trading path leading from the Valley Towns to the Over Hill Towns near the head of the West fork of Tellico River." Do you know where the head of the West Fork of Tellico River is?

A. It heads up near the Moss Gap.

Q. From the map which you have filed, it does not show anything of the headwaters of Tellico River except that part you claim to be in North Carolina?

A. That is all.

Q. It does not show the headwaters of the West Fork of Tellico River?

A. No, sir. The west prong of Tellico River heads up near the Moss Gap.

Q. You don't know where that particular point is, do you?

A. I believe, I am pretty positive that the water runs from the Moss Gap on the Tennessee side of the mountain.

Q. "Striking the old trading path leading from the Valley Towns to the Over Hill Towns" do you know where that is?

A. I know the trail or path about the ninety-third mile tree.

Q. Do you know whether or not that is the path referred to in the Commissioners' report?

A. No, sir.

Q. You have no information as to that?

A. There is something said about and old trail being in there.

Q. Is not that the Wah-chee-see trail?

A. That is the Wah-chee-see trail indicated on this map that crosses the ridge pretty close to the ninety-six- mile.

456 Q. You did state that you surveyed around the headwaters of Tellico River; that is correct is it not?

A. Yes, sir.

Q. That survey showed the divide between Snowbird and Tellico and also Beaverdam and Tellico, does it not?

A. Yes, sir.

Q. Beaverdam is not represented on this plat, but is in a southwesterly course.

A. Yes, sir.

Q. That Ridge is the divide and shows the divide of the waters of stream running into North Carolina from the streams running into Tennessee?

A. Yes, sir.

Q. Following down the State Ridge, till you come to Tellico River, the ridge terminates does it?

A. Yes, sir. Tellico River cuts through there.

Q. Do I understand from your statement that the Jenk's Ridge,

on the North Side, is a continuation of the State Ridge on the South side.

A. You can consider it a continuation. That is a continuous ridge.

Q. After crossing the Tellico River, there is another Ridge known as the Jenk's Ridge, leading up the Jenk's Knob?

A. Yes, sir, Jenk's Knob is one of the prominent parts in that particular section of the county.

Q. Jenk's Ridge runs down from Jenk's Knob, in the direction of Tellico River.

A. Yes, sir.

Q. How many marked trees did you find on Jenk's Ridge or on the south side of the river, which you say were state line marks; and please define them as definitely as you can again?

A. I found three trees that I was satisfied were state line marks on the Jenk's Ridge, after crossing Tellico River. If you want a definite description of the trees, I will have to refer to my notes.

Q. All right.

A. The first tree that appears on the Jenk's Ridge, after
457 crossing Tellico River, is tree one hundred and five, which is a hemlock, pointed out to me by Mr. Jasper Fain; he tells me that the tree was blocked by him some years before. The tree is now down. It is about twenty inches in diameter, and the original marks were blocked out. The next tree is noted as tree one hundred and six, a hemlock, which is now dead, about twenty inches in diameter, two feet to the right of station thirty-one, plus sixty-seven, and has three hacks on the left side. The hacks are not very plain, but were sufficiently plain to lead me to believe that it was a State line tree, and I believe so yet. The next tree, number one hundred and seven, is a holly, about eighteen inches in diameter, has the figures eighty-six written so as to make the number eighty six, and below those figures the letter "M" the 8 is very plain and the 6 is also very plain; a part of the 6 is gone caused by some defect on the upper side of the tree, caused by burning, some years ago. One side of the "M" is defaced a little. There is no question in my mind but that the figures 8 and 6 and the letter "m" were marks made by the Commissioners for the 86th mile tree. In my judgment, having a good knowledge of all the marks up to that point, I was thoroughly satisfied, that it was the 86th mile tree. Those are all the trees I found on the Jenk's Ridge.

Q. The first tree, a hundred and five, how far is that from the river on the south side?

A. It is about five hundred feet.

Q. Is it on a big point on the slope of the ridge or how is that?

A. The fact of the matter is, the Jenk's ridge, after getting down pretty close to the river, say between a quarter and a half of a mile from the river, forks. I think there are three forks; this fork, upon which we found the marked trees, is the middle fork. Where the first tree stands, the ridge is not very distinct, close to the river. It really does not show up very prominently until you get up within one hundred or two hundred feet of the eighty-sixth mile tree.

Q. How about tree 106; how far from the river?

A. Tree 106 is very close to 107, on the same ridge.

Q. In order to reach tree marked "86 M" from the other
458 two trees you have to cross the branch?

A. No, sir; I don't remember any branch.

Q. Don't you cross a hollow or ravine?

A. No, sir.

Q. Did you follow directly up the ridge?

A. Really, when the ridge gets down close to where we crossed the river it loses the appearance of a ridge and has the appearance of a bank till you get up three or four hundred feet from the river. The ridge is not very distinct at that place.

Q. How far is it from those two trees up to the "86 M." tree?

A. It is about three hundred feet from the first tree to the "86 "M." tree, tree 105. The tree I speak of stands too low down to be on a distinct ridge and tree- 106 and 107 are very close together, less than a hundred feet.

Q. I understood you to say that tree- 105 and 106 were very close together?

A. No, sir; tree- 106 and 107.

Q. Those two are on the same ridge?

A. Yes, sir.

Q. Between tree 105 and trees 106 and 107 didn't you have to cross a ravine?

A. No sir, I have no recollection of the slightest indication of a stream. After you pas tree 107 and get upon the ridge there is a little spring that comes out close to the top of the ridge, but it is out to the right of those trees located upon the ridge.

Q. Mr. Burns, did you follow the line from the 101st mile tree at the turnpike road down to the Hiawassee river?

A. No, sir; I only followed the line a little over a half a mile.

Q. You were never at the Hiawassee river?

A. No, sir; not where the state line crosses.

Q. You don't know how it crosses or where it shows up there?

A. No, sir; I was never down any further than a half of a mile.

Q. The line was shown on the map as it appears from the mouth
of Caney branch across diagonally to the river, that is the way
459 it appears to you?

A. That is the way it is shown on the map.

Q. Going back to the Tennessee river, the line was shown that it crosses Tennessee river at right angles, does it not, going directly across?

A. Not exactly, pretty close to it, eighty degrees possibly or possibly sixty degrees.

Q. I am speaking now with reference to the plat, around the plat, shows that it crosses sixty or possibly eighty degrees?

A. The fact is the river is in a bend upon the plat at that place. There are a great many different ways you could look at it.

Q. Doesn't it show a straight line fully a mile across the river?

A. Yes, sir; that is indicated from the mile circles.

Q. Is not the line shown upon the plat a part of the report as well as the plat itself, showing how the surveyors ran?

A. I don't understand your question.

Q. Do you construe the plat of 1821 part of an exhibit to the report itself showing the location of the lines?

A. Yes, sir.

Q. Would not the line shown upon that plat be a part of the report showing what they did?

A. Yes, sir.

Q. The fact that the line crosses the stream is a part of the plat, is it not; in other words there is no question but that the commissioners crossed the Tennessee river as appearing from the plat itself?

A. No sir.

Redirect examination.

By F. A. SONDLEY, Esq.:

Q. You stated in your cross-examination that, in meandering the crest of a ridge, surveyors would not undertake to indicate every minute turn or angle, but would take some body in the deviations and set their instrument on it, and plat from where they set the instrument down, making a straight line, although the actual putting of the chain on the ground and marking the trees would go around with the meanders of the ridge?

460 A. You are referring to the original plat?

Q. No, sir; what you stated about surveyors generally?

A. No sir; I didn't intend to convey that idea of surveys nowadays. The surveys which I made were chained along the line as sighted.

Q. I am speaking now of the habit of surveyors, generally, in rough surface surveys?

A. Yes, sir; in rough surveys it is true.

Q. It is only the most skillful engineers doing work with minuteness that would make every slight turn on the ridge?

A. Yes, sir.

Q. Is not that equally true about meandering streams?

A. I think that is true along the route of the original survey. It does not attempt to locate every slight deviation from a straight line But they would take some object and sight to another object in the same line and show that straight line upon the map, when, in truth, they actually ran the deviations of the line.

Q. Would it *being* anything strange, in making a plat of the size of this plat of 1821, if the surveyor should show that they crossed at the Tennessee river, sighting from some object, especially over very rough ground, and taking the body of the plat, although the chain and markers actually went around?

A. I have checked over the work and I think that was done.

Q. Is there anything in the character of the ground in support of that view there?

A. Yes, sir. If you undertake to cross the river, using the course and distance of the straight mile, you would have to go over a very

rough, steep high cliff in order to get to the river, and it is almost impossible to go that way.

Q. Would that condition of affairs at such a place as that and under such circumstances indicate to a surveyor that the true line as adopted by them was not as it was marked?

A. No, sir; I don't understand it that way. I think the line as they marked it was intended for the line to be adopted.

Q. Taking the plat of 1821 at the point where it makes this
461 last bend, before crossing Tennessee river, you say is made a straight line to the opposite point on the opposite side of the river as laid down on that plat?

A. Yes, sir.

Q. In what direction is that straight line running, from the point where it last made the last bend north of the river, in regard to the river?

A. It runs rather down the stream.

Q. Would it be possible for a man standing at the point, at the last turn of the plat before crossing the river and platting around from that point, for him to cross the Tennessee river at the point where Tennessee claims the line crosses the river?

A. No, sir; it would be impossible.

Q. Why?

A. The plat of 1821 shows that one mile from the mouth of a stream, which is marked "Creek" upon their plat, and following the undisputed line from the Smoky mountain side to a point within one mile of slick rock, you can see from there the mouth of the stream from the Smoky mountain side, which is not in dispute. And, setting the compass a mile from the mouth of Slick Rock creek, using the bearing of the straight mile, will carry you very close to the mouth of Slick Rock creek.

Q. You say, if you start at a point where they took their bearing for an object at the mouth of Slick Rock creek, and run the bearing of the map of 1821, you cannot cross the way Tennessee claims the line crosses, because the course down below there would go in another direction?

A. Yes, sir.

Q. What is the, bearing as near as you can make it out, from the plat of 1821 of that straight line which runs toward the mouth of Slick Rock creek?

A. About seventy-five, thirty, southwest.

Q. You ascertained that by the use of your protractor?

A. Yes, sir.

Q. What would be the direction from the same beginning point or the point Tennessee contends the line crosses the river?

462 A. I don't understand your question.

Q. Take some point from which you could measure the angle towards Slick Rock creek, and measure the angle the way Tennessee says the line crosses the river, then, what would that angle be?

A. Do you mean to give the bearing from the same point?

Q. Not on the map of 1821, but on your map. Take a point one

mile back from the river, which bearing would lead you to Slick Rock creek at the degrees you have given, and take the bearing from the same point, and go to Slick Rock creek, the way Tennessee claims the line crosses the river, what would that bearing be?

A. About south fifty-three, forty-five, west.

Q. What is the difference between the two angles, one directly toward the mouth of Slick Rock creek and the other directly over the course toward where Tennessee claims the river was crossed?

A. About twenty-two degrees.

Q. Then, whether that line is correctly platted or not, the whole thing is inconsistent with the Tennessee contention?

A. Yes, sir.

Q. Down at the Tennessee river, you spoke of a spruce pine tree with fore-and-aft marks, how far was that tree from the bank of the river?

A. About twenty feet.

Q. You say in the state line report and the plat accompanying it no angles are given, and on the ground no corner trees are marked?

A. No, sir.

Q. Would not the line marked itself point out the bank of the river and not that twenty feet back?

A. Yes, sir.

Q. The fore-and-aft tree would be marked in the line approaching the river and not going out from the river?

A. Yes, sir.

Q. And it was so marked?

A. Yes, sir.

Q. There was something I didn't quite catch in your cross-examination about the tree on the north side of the river nearly opposite the mouth of Slick Rock creek? What did you say about
463 that?

A. I said that, in searching that part of the line down the Tennessee river for original marks, I found a tree there that had a very strong resemblance of the original state line marks?

Q. Do you remember at what place that tree stood?

A. No, sir; but it was considerably lower than the spruce pine.

Q. Higher up on the Slick Rock side?

A. Yes, sir.

Q. Do you remember the kind of marks, whether fore-and-aft or side-line marks?

A. No, sir.

Q. Do you remember which side of the tree the marks were on?

A. No, sir.

Q. Crossing the Tennessee river, you say the plat of 1821 shows the line to have run for some distance up the creek?

A. Yes, sir.

Q. The distance is not as great as you went up the creek?

A. No, sir.

Q. Was the creek surveyed according to the plat of 1821?

A. Yes, sir.

Q. You explained that you thought an error was made on the plat in sketching in and not in the actual survey?

A. No, sir.

Q. Your attention on cross-examination was called to the fact that at that place there were what was called on the other side etchings, but from what I understand from a surveyor in the last few days are called hachures. Now, I want to ask you if they put the creek at the wrong place where it departs from the line, if that would not correspond with putting the hachures a little too early?

A. Yes, sir.

Q. So that the error, as you thought, of departing from the creek too early would cause the corresponding error in platting in the hachures too early?

A. Yes, sir.

464 Q. The surveyor, in platting his work, does show on his paper, or tracing linen, or whatever he platted upon, his line which is designated at the end?

A. Yes, sir.

Q. Then, if he has anything to sketch, when does he do that?

A. Afterwards.

Q. There would be properly hachures or etchings marks put upon the plat at the point where the line departed from the creek?

A. Yes, sir.

Q. But you think the hachurers were put in further down caused the departure between the creek and the line to be at the wrong place?

A. Yes, sir.

Q. Now, taking the blue-print, which was introduced as an exhibit in your testimony, and observing from the mouth of Slick Rock creek to where this departure of the creek from the line was made, what do you see on the side opposite that from which the creek leaves the line?

A. I see some hachures or etchings-in.

Q. Look at the exhibit in this case at the same point and see if you find any hachures there?

A. No, sir; I don't find any.

Q. Then, the two are different in that respect?

A. Yes, sir.

Q. Though both purport to be certified copies of the original plat of 1821?

A. That is my understanding.

Q. Now you were asked on cross-examination if the surveyors passing up the creek would not, in all probability, have noted the creek, and I understood you to state that they would have?

A. Yes, sir.

Q. Would they have noted in that every character of the survey from the time they came to the creek, if they continued up it for some miles?

A. No, sir; I don't think they would.

Q. Is it not usual for surveyors, in reporting their survey of such

work to say, "thence up the creek various courses" and it will be impossible to tell where they left the creek?

465 A. Yes, sir.

Q. That would cause them, in platting in the creek, to get it in at the wrong place?

A. Yes, sir.

Q. Did you ever see, or have you any knowledge of, where those notes of the surveyors of 1821 are?

A. No, sir.

Q. You don't know where those notes are or whether they noted the creek where that stream seems to be placed upon the plat?

A. No, sir.

Q. You have spoken repeatedly of the contention of Tennessee. Who informed you as to where those Tennessee contentions of the state line location were?

A. I don't know whether I can answer that question correctly. I have heard it talked of by a number of different people, and I have had it pointed out to me.

Q. You have heard it spoken of in the trials heretofore, in which it was agreed where those contentions you were speaking of are located?

A. Yes, sir.

Q. Coming over to this Tellico territory, I understood you to say that the teaching of the map or plat of 1821 was that the water divides was comprised at that place? Did I understand correctly your meaning?

A. Which place are you speaking of?

Q. Of the Tellico territory.

A. The original map or my map?

Q. The original map of 1821?

A. I answered the question, debarring me from any knowledge of the country, just presenting the map itself, that by the teaching of the map——

Q. What do you mean by "teaching of the map?"

A. Simply because it didn't show any stream; it showed a continuous unbroken ridge.

Q. What do you learn from the teaching of the map and from the undisputed line?

A. That the line crosses the head of Tellico river. The

466 topography of the country shows that.

Q. Then in speaking of the teaching of the map, you were simply speaking with reference to the hachures on the map of 1821, and leaving out all other information?

A. Yes, sir.

Q. Haven't you seen any papers that directs the state line to run with any water divides?

A. I don't recollect that I have.

Q. Then, the fact as to where the water divide was is a matter of association?

A. Where it is in accordance with the map.

Q. If you had followed the water divides, starting where you

did, you would have to go around to South Carolina and a portion of the Georgia line to get to Tennessee, if you go according to the Tennessee contention?

A. That is my recollection. I didn't make any examination of that.

Q. It would be impossible to follow the water divides?

A. Yes, sir.

Q. Is it not a fact that the water divides in this country are not always the highest ridge?

A. Yes, sir.

Q. The highest ridge is on the northwest while the water divides might be to the southwest of that?

A. Yes, sir.

Q. Hence, you might or might not follow the main ridge in going with the water divides?

A. Yes, sir. The ridge leading from Fodder Stack is the main ridge, while Huckleberry Knob is the highest point in that whole country, and is not the main ridge; yet it is the extreme highest point.

Q. Is there anything in any report which you have read of what the surveyors did that said they didn't cross any stream or any particular stream?

A. No, sir.

Q. On the contrary, the report said that they crossed the
467 Tennessee river and the Hiawassee river?

A. Yes, sir.

Q. Then the way they went around had nothing to do with those rivers, so far as the water divide was concerned?

A. No, sir.

Q. Place yourself at any point from the 101st mile post around up to Jenk's Knob, would you be on the undisputed state line?

A. Yes, sir.

Q. Take the map of 1821 and starting at any undisputed point, is it possible to follow the contour on that map around to Jenk's Knob and go around the head of Tellico?

A. It is altogether impossible.

Q. Coming to county corners, where the undisputed line is again taken up, and following that undisputed line around to Junction, place yourself at any point along there and, taking the state line plat of 1821, starting at any one of those points, is it possible to go by Stratton Bald Hayo, Hangover, Cold Spring Knob to the Tennessee river?

A. No, sir.

Q. Is it possible in both instances to go by way of the North Carolina contention where the two places are in dispute?

A. I don't understand your question.

Q. Taking that map as your guide, is it possible to follow any course except the North Carolina contention as to the two places in dispute?

A. No, sir.

Q. Those commissioners in their report and in their plat sub-

mitted as a part of their report, as you stated, do not show on their plat all that they reported?

A. In their report they call for the west fork of Tellico, but on their map they didn't lay down the west fork of Tellico.

Q. That showed, to your mind, as I understand, that the plat was not always advertent to the notes of the report?

A. Yes, sir.

Q. If I correctly apprehend you, whatever may be the
468 slight difference between the plat of 1821 and the marked line which you found on the ground, the difference in no way helps or supports the contention of Tennessee?

A. No, sir.

Q. It is a very slight difference from the North Carolina contention and was a very accurate survey at the time the survey was made?

A. Yes, sir.

D. B. BURNS.
By EDMUND B. NORVELL,
Notary Public & Commissioner.

469 WEDNESDAY, *November 30th*, 1910.

Appearances: For the State of North Carolina—General Theo. F. Davidson, Ben Posey, Esq., F. A. Soudley, Esq.
For the State of Tennessee—Charles T. Cates, Jr., Esq., Attorney General of Tennessee; T. E. H. McCroskey, Esq.

D. B. BURNS, recalled for further cross-examination, testified as follows:

Cross-examined by General CATES on behalf of the State of Tennessee:

Q. 1. You say you live in Knoxville, Mr. Burns?

A. Well, my parents live in Knoxville; since this testimony was taken in Asheville. I married and live in Asheville.

Q. 2. Where were you living last June?

A. I recognized Knoxville as my home last June.

Q. 3. What are you doing at this time?

A. I am engaged in engineering work, surveying a large boundary of timber land.

Q. 4. For whom?

A. For the Whiting Manufacturing Company, Mr. Hopkins and others; represent them jointly—Hopkins conveying the land and Mr. Whiting paying for it and I am engaged in surveying it.

Q. 5. Is that land part of the land in dispute in this case?

A. Yes sir.

Q. 6. At which point is it in dispute?

A. In the Slick Rock Basin.

Q. 7. So Mr. Hopkins has negotiated to sell the land between the Slick Rock basin and the Hangover lead or ridge to Mr.
470 Whiting or to the Whiting company?

A. Well their Grant 1035 covers all the land from the

State Line where it calls to run up Slick Rock and the Big Fodder Stack.

Q. 8. Now answer my question—Mr. Hopkins has negotiated to sell this particular land to the Whiting company?

A. Yes sir.

Q. 9. And you are working for both of them?

A. Yes sir.

Q. 10. How long have you been working for both of them?

A. A little over two years.

Q. 11. So that when you began to make your investigation of that country over there in relation to the State Line and Slick Rock Creek you were working for Mr. Hopkins and for the Whiting Company?

A. The first survey I made for the State Line was for Mr. Hopkins indirectly before I commenced the general survey. Mr. Cozad was the man I was working under directly.

Q. 12. Mr. Cozad the agent of Mr. Hopkins?

A. Yes sir.

Q. 13. Mr. W. R. Hopkins who is present at this time?

A. Yes sir.

Q. 14. And where were you living when you were engaged to do that work, by Mr. Hopkins?

A. Knoxville I recognized as my home, but I was not in Knoxville very much; my parents lived there.

Q. 15. Mr. Hopkins was claiming under some Thompson grants?

A. Pete Belding grants, known as the Belding lands.

Q. 16. And the Beldings and Hopkins have been in litigation with the Hebards in regard to that land for something like 12 or 14 years?

A. I know very little about the litigation there. That is my understanding.

Q. 17. Now you came to Knoxville in what year?

A. Well I don't remember exactly—my parents moved there about four years ago, I believe. I just called it my home
471 because my parents lived there. I lived at different places.

Q. 18. When did you establish an office in Knoxville, if at all?

A. Never established an office in Knoxville at all, just called it my home because my parents lived there.

Q. 19. Where did you fall in with Mr. Hopkins?

A. I was in Knoxville when I undertook to do this work for Mr. Hopkins.

Q. 20. You know how you and Mr. Hopkins came together when you got this work?

A. I got this work through Mr. Cozad the agent of Mr. Hopkins.

Q. 21. How did you and Mr. Cozad get together?

A. Well, Mr. Cozad, I believe, had enquired of me through my father was the way it was.

Q. 22. Had you been on this land down there between the State Line and Slick Rock before you and Cozad had a meeting?

A. No sir. The first time I met Mr. Cozad was when I went to make this survey.

Q. 23. How long before you went on the land before you met Mr. Cozad?

A. I met Mr. Cozad in Andrews on my way to make this survey. I met Mr. Hopkins in Cleveland, Ohio, before this.

Q. 24. I thought you said you met Mr. Cozad before you met Mr. Hopkins?

A. I met Mr. Hopkins before Mr. Cozad.

Q. 25. How did this survey come up?

A. My father told me it was to come up and he got the information from Mr. Cozad, I suppose. My father and Mr. Cozad had been acquainted for several years.

Q. 26. And your father got Mr. Cozad to get you to make this survey for this land down there?

A. Mr. Cozad and my father had been friends for a long time, and I had been recommended.

Q. 27. You had not made any surveys for them before?

A. No sir.

Q. 28. When did you first go on this land?

A. It was along the latter part of March, or the first few
472 days of April in 1908.

Q. 29. How long before that had you been interviewed or employed by Mr. Cozad?

A. I had not been employed by Mr. Cozad until I went to make this survey.

Q. 30. Now how long before March, 1908, had you come to Knoxville, or recognized this place as your home or post office address?

A. I suppose it was about two years, I don't remember exactly.

Q. 31. Now during those two years you didn't have any office in Knoxville?

A. No sir. I was employed by the Baltimore & Ohio Railroad for eighteen months of that time and I was employed by the Lake Shore & Michigan Southern for six months in Cleveland, Ohio, and I came from Cleveland, Ohio, when I was employed by Mr. Cozad to make this survey.

Q. 32. Now as I understand from your examination in chief in testifying to your qualifications as an engineer, I believe you only claimed that you had been out surveying in the woods something like a year. Is that right?

A. About two years I have been on this survey.

Q. 33. Without reference to this survey—before coming to Knoxville you had only had about one year's experience of actual surveying out in the woods, hadn't you?

A. No sir, I had been engaged in land surveying ever since I was about 16 years old.

Q. 34. That was when you were in school?

A. While I was in school and while I was in college.

Q. 35. And when you were in college you were learning to survey land?

A. No sir.

Q. 36. When did you take your degree?

A. In 1901.

Q. 37. Tell me from 1901 down to 1908 what land surveying you did?

A. From 1901 when I graduated, for about 11 months, I was employed by the Niva Coal & Coke Company, at Berlin, Pennsylvania. They were making extensive operations in Somerset County. I had complete charge of the office work in making up the calculations and if I found any error I would check it up and send it back for correction.

473 Q. 38. You were doing office work and not field work?

A. At Berlin I was doing office work.

Q. 39. How long were you at Berlin?

A. About 11 months.

Q. 40. Then where did you go?

A. To Morgantown, West Virginia, with Prof. Morris.

Q. 41. How long were you there?

A. Between two and three years.

Q. 42. What was you doing?

A. I was doing general engineering.

Q. 43. What do you mean by that?

A. I surveyed two or three coal fields. One had 200 acres, another had several thousand acres, also done civil engineering work, including railroad work and street paving work.

Q. 44. You mean you run out three tracts of land during the time you were with Morris?

A. I run out a number.

Q. 45. How many in those particular boundaries?

A. I stated I did several. Some had 200 acres and several had 2,000 or 3,000.

Q. 46. And you had two or three years' experience with Morris in field work and street work and other kinds of engineering?

A. I think I was there about three years, I am not positive about that.

Q. 47. Now after Morris, where did you go?

A. After that I was engaged in railroad work principally for about 2 and ½ years.

Q. 48. What railroad?

A. The old Tide Water Railroad. They closed down about a month and then I went to the Coal & Coke Railroad in West Virginia about 8 months and from there I went to the Baltimore & Ohio Railroad on preliminary location surveys and remained for about two years.

Q. 49. That was railroad engineering work?

A. Yes sir. I went from there to Cleveland, Ohio, and
474 worked for the Lake Shore & Michigan Southern Railroad for about six months?

Q. 50. What kind of work was that?

A. Office work principally.

Q. 51. Now you came to Knoxville this morning for cross-examination, did you not Mr. Burns?

A. I came to Knoxville on Sunday evening, been in Knoxville ever since that time.

Q. 52. You haven't been here before the Clerk prior to this morning?

A. I haven't been in here—I have been where they could get me any time.

Q. 53. You had not communicated with counsel for Tennessee?

A. The only communication I had with you I told you I would be here Monday night. I had not reported to you after I come to town.

Q. 54. Who is Mr. H. E. Libby?

A. Mr. Libby was a friend of mine that I met while I was working for the Baltimore & Ohio Railroad.

Q. 55. You brought him South with you?

A. Yes sir.

Q. 56. Did he have an office here in Knoxville?

A. No sir, we had just agreed that we would start out a firm under the name of Burns & Libby.

Q. 57. Without any particular locus or habitat?

A. No sir. He started with me and we dissolved partnership, in fact we never started it up right. We were just getting ready to put up an office when he moved to New York City.

Q. 58. Now after you had written counsel for Tennessee that you would come here on the 28th (November) for further cross-examination you received a letter from him requesting you to bring your maps, exhibits to your deposition?

A. Yes sir, that was in the letter requesting me to bring them. I intended to bring them with me, but I had to make a trip that took me through the mountains and I could not carry all the maps with me, and I came to Knoxville through the Chilhowee mountains and I expected them to be here this morning and I am disappointed they are not here now.

Q. 59. Were they to be addressed to you?

475 A. To Mr. Hopkins.

Q. 60. By express?

A. I think the maps were to be sent here by mail.

Q. 61. There is spread out before you here a blue print map. State if that is a copy of an exhibit to your original examination in this case which you furnished to counsel for Tennessee?

A. Yes sir, it is a print of that original tracing.

Q. 62. Do you remember the name of that exhibit?

A. I do not.

Q. 63. You haven't it here at this particular time?

A. No sir.

Q. 64. Who made this map of which this is a blue print?

A. I did.

Q. 65. I understand that you made the original map or perhaps did the mechanical work upon the original map. Who made it in the first instance?

A. The original map?

Q. 66. The original map, yes sir.

A. I made it.

Q. 67. Didn't Mr. H. E. Libby make it?

A. No sir, not this map. Mr. Libby made another map, 1,000 feet to the inch.

Q. 68. And which you adopted as your testimony in the case of Hebard v. Belding?

A. Yes sir, I figured all of the notes in the field that Mr. Libby made the map from.

Q. 69. He made the map?

A. I made this map and he made the other map.

Q. 70. He made the map which you used as an exhibit to your deposition when it was taken on behalf of the Hopkins claimants in Hebard v. Hopkins pending before the Circuit Court of the United States at Knoxville under a bill of review?

A. Yes sir, he did the mechanical work on it. I figured up all the notes on it.

476 Q. 71. Now he was employed with you as a member of the firm of Burns & Libby by the Hopkins claimants to this territory?

A. Yes sir.

Q. 72. And he went with you down there at the same time, didn't he?

A. Yes sir.

Q. 73. Did you and he jointly superintend the survey that was made there, beginning in March or April, 1908?

A. Yes sir, that survey up to the junction from the turnpike road on the Smoky Mountain to the Junction.

Q. 74. At that time you didn't go over on the Tellico waters?

A. No sir.

Q. 75. Mr. Burns, the Hopkins claimants were not interested in the Tellico waters?

A. No sir.

Q. 76. Now are they interested in that disputed boundary between State Ridge and around the Tellico waters between the divide of the water shed around there?

A. I can't tell you. I know very little about that. I know who paid me for the work.

Q. 77. Who employed you to do that work?

A. By two different parties.

Q. 78. Who?

A. Mr. M. E. Cozad paid one-third of that survey and I looked to Pete Belding for two-thirds, and that was paid by Mr. Thompson.

Q. 79. Who is the claimant of the land?

A. I don't know.

Q. 80. Mr. Merrick the claimant of the land?

A. Mr. Merrick is the attorney that paid me.

Q. 81. Is Mr. Merrick the attorney of the claimants of the lands under the North Carolina grants?

A. I looked to him for the money and he paid me for the work.

Q. 82. Now you and Libby went on that land together and worked together beginning March, 1908?

A. Yes sir.

477 Q. 83. And afterward you were both examined as witnesses in the case of Hebard v. Belding in the Circuit Court of the United States?

A. Yes sir. That is the first part of the land from Smoky Mountain to the Junction, and he had nothing to do with the Tellico waters at all.

Q. 84. What junction?

A. From Fodder Stack.

Q. 85. That which includes the Slick Rock country as it is called?

A. Yes sir.

Q. 86. You say you went in there without any preconceived idea as to where that line run?

A. I can't say exactly that I did. When I went in there to make that survey I was under the opinion or under the impression rather that the line run up over the Little Fodder Stack leaving the little Slick Rock Creek about a mile and a quarter.

Q. 87. And up to Little Fodder Stack?

A. Yes sir.

Q. 88. And up Big Fodder Stack to the junction with the main mountain?

A. Yes sir.

Q. 89. And how—and it is to that place that the Hopkins people claimed that the land went?

A. It was the understanding that was where the line went and I wanted to ascertain where the true line went.

Q. 90. You had received instructions from Mr. Denton another surveyor?

A. Yes sir.

Q. 91. And he also told you that the line run around Little Fodder Stack?

A. He was of the opinion that it did. He had made some little investigation a few months before and he had found an old line about a mile and a quarter at the falls of Little Slick Rock.

Q. 92. An old line leading toward the Fodder Stack Ridge Northwardly and leaving Slick Rock Creek at what is called the "Little Falls"?

A. Yes sir, about there.

Q. 93. How far is the Little Falls above the mouth of Slick Rock?

A. About a mile and a quarter.

478 Q. 94. So that from Mr. Cozad and Mr. Denton you had received the impression that the line also run around Little Fodder Stack and Big Fodder Stack to the junction of the main mountain?

A. Yes sir.

Q. 95. The Hopkins claimants did have lands over there, or claimed lands there in that country?

A. Their State grant called to run with the State Line.

Q. 96. They were North Carolina grants West of Slick Rock and the top of Little Fodder Stack? Were they not?

A. Yes sir.

Q. 97. Running up to Little Fodder Stack and some of them over it?

A. I don't know anything about the lands after you get East of Slick Rock.

Q. 98. You mean West of Slick Rock?

A. Yes sir.

Q. 99. But Mr. Burns, is it not a fact that notwithstanding you went in there with the preconceived idea that probably the State Line run around Little Fodder Stack and receiving such idea from communications of Cozard—Cozad—and Denton that you and Libby within 24 hours after you went on the ground established in your minds, beyond a doubt, that the line run up Big Fodder Stack?

A. I would like to make an explanation.

Q. 100. Answer the question and make all the explanation you desire?

A. Yes sir that is the true situation. I wish to state that when I received my instructions to go in there and make the survey and when I was told by Mr. Cozad and Mr. Denton that I would probably find the line to run over the Little Fodder Stack that they really believed it to run that way, but I went in there to find the true situation regardless of where it was. I went in there with the true determination of finding where it was. If I found it run over to Big Fodder Stack I was going to run it that way; if I found it to run up Slick Rock Creek I was going to run it that way, and if I found it to run around Little Fodder Stack I was going to run it that way.

Q. 101. Mr. Cozad had been familiar with that country for years and years—25 years?

479 A. I think he had been in the country for 7 or 8 years before.

Q. 102. And Mr. Denton had been making surveys there in that country for 10 or 15 years?

A. Mr. Denton was raised in Graham County. I think he testified that he had been surveying for 6 or 7 years.

Q. 103. And didn't he testify that he had been surveying in that country—Slick Rock to Fodder Stack—for 10 or 12 years?

A. I think he had been raising cattle over there.

Q. 104. And notwithstanding you and Libby went in that country and established in your mind within 24 hours that the line run up Little Slick Rock and then up Big Fodder Stack as you point out on this map?

A. I determined in my mind that it could never go over Little Fodder Stack or Hangover, and the bearing of that line for six miles took me up over Big Fodder Stack.

Q. 105. And then you made up your mind that it run up Slick Rock and up Big Fodder Stack before you made any examination on the ground at all?

A. I expected to find it there.

Q. 106. Then you made up your mind that the line run up Slick Rock Creek and thence to Big Fodder Stack without making any examination on the ground at all, didn't you?

A. I determined from the map that the general course of the map took me up to Big Fodder Stack.

Q. 107. What map?

A. The map of 1821.

Q. 108. You did determine in your mind, without a doubt, that the State Line run up Slick Rock Creek and thence to Big Fodder Stack within 24 hours after you went on the ground and before you made any examination of the territory?

A. No I didn't say that. I took the map on the ground as my guide. I was giving that for my guide to find the old marked lines and run by the commissioners in 1821 and we found the undisputed line on the Smoky Mountain side, and the map showed that it crossed at some stream and it was Slick Rock Creek. I took my observation from the mountain where we could see all across
480 that basin to where it makes that break to the left where it crosses the Tennessee river and that it was making right for the Big Fodder Stack and I determined with that before me that that was the place where I was going to hunt for the State Line and I did that and found the State Line.

Q. 109. And you did determine first then that the place to start on the North side of the Little Tennessee river was opposite the mouth of Slick Rock, is that it?

A. I started back about 3½ miles North of Slick Rock to get our survey to go three or four miles beyond.

Q. 110. How much work did you do within 24 hours after you got over on the ground?

A. The first work we did was to search for marks on the Smoky Mountain side that was not in dispute.

Q. 111. On the North side?

A. Yes sir.

Q. 112. How long were you there?

A. We were camped there for four or five days.

Q. 113. So that within 24 hours of those four or five days when you were on the North side of the river you made up your mind that it run up Slick Rock?

A. To follow the map I made up my mind that it run that course. I made my investigation to follow the old marked lines.

Q. 114. Now you said you had before you at that time a copy of the old map of 1821. Where did you get that copy?

A. It was furnished to me by Mr. Cozad.

Q. 115. Has a copy of that map been exhibited with your deposition in your examination in chief? I think it has—do you recall?

A. Two years or a little over two years ago I filed a tracing of it with my deposition that was taken in Knoxville about two years ago and then there was a print of it taken in Asheville.

Q. 116. Now I lay before you what purports to be a certified copy of the map of 1821 filed in this case as an exhibit—Exhibit
481 "A" to the deposition of Onley Williams, and ask you if that is a similar copy to the one that was before you when you went there on the ground in 1908?

A. The fact of the matter is I have seen several different certified copies and there was none of them exactly the same. This looks about like the one I had.

Q. 117. Now I believe you stated on your original examination

that you surveyed the Little Tennessee river for a considerable distance up the stream from where it cuts through the mountains?

A. Yes sir I surveyed it there near the full length of Graham County.

Q. 118. Did you do any surveying over in what is now Macon County?

A. No, sir.

Q. 119. You know where 20 Mile Creek is?

A. Yes sir.

Q. 120. I see on this map, Exhibit "A" to Williams' deposition what purports to be a stream on the North side East of the line between the States. Is that about in the right place for 20 Mile Creek?

A. Well approximately I suppose it is. It is about 6 or 7 miles I would say from Slick Rock Creek.

Q. 121. It is the first creek on the North Carolina side emptying into Little Tennessee river on the North side of that river and East of the State Line, isn't it?

A. It is the first stream of much importance.

Q. 122. When you are coming down the State Line from the Gregory Bald on the East or North side toward the Tennessee river you can see the waters of 20 Mile Creek, can't you?

A. I never was up on the bald. I never was any further than the Turnpike where it crosses the mountain.

Q. 123. Can't you see it from that part of the mountain?

A. I don't think so. I don't think you can see it from that part of the mountain.

Q. 124. That is your recollection about it?

A. Yes sir.

Q. 125. There is such a stream of this kind on Williams' map?

482 A. There is such a stream. I can't say whether it is intended for 20 Mile Creek. Not much of this map that has the streams sketched right on it. Great deal of it that I know is wrong.

Q. 126. I will ask you to state if it is not a fact that going from Slick Rock Creek where the line as marked on your map leaves it in the direction of and up to Big Fodder Stack and thence with the Big Fodder Stack lead toward the junction to Hangover Ridge and Hao and Cold Spring Knob don't all tower up above to the left?

A. The fact of the matter is when you go up Slick Rock you can't look out at all. You have to look up, and when you get out to the junction you can look out and see Hangover and the ridge to the left.

Q. 127. And they are much higher than any point you travel when you leave the creek?

A. I don't think Slick Rock is. The best view of the mountains you get is Big Fodder Stack, and a great many places you can see Little Fodder Stack.

Q. 128. And is it not also a fact that coming up this lead from where you put Tree No. 53 on your map to Big Fodder Stack and

thence along the Big Fodder Stack lead to the point where you have marked "Junction", that you virtually run around the headwaters of Slick Rock Creek?

A. Yes sir the Big Slick Rock.

Q. 129. And any one traveling that line described in my last question can easily see that you are coming around the headwaters of Big Slick Rock, can't they?

A. Yes sir. Slick Rock is the only stream you can see going up that way to your left until you pass the junction.

Q. 130. Now Mr. Burns, how far is this stream, which you have marked on your map "Right fork of Slick Rock" from the line of the Big Fodder Stack lead as run by you at the point you have designated as the "Cherry Log"?

A. Well Slick Rock as I have shown on this map I never actually surveyed it any further than Fodder Stack lead where I have shown Big Fodder Stack, and the streams are sketched in there from the best observations I could get from the peaks. I don't know
483 how far. I would say between a quarter of a mile, and between that and a half. The stream was actually surveyed for a distance of about five miles, and from there it was taken from observations from different peaks.

A. 131. From this place you designate as "Cherry Log", you can see the right fork of Slick Rock underneath you?

A. I don't know that you can see the water. You can see the valley where it runs.

Q. 132. You can see the gorge through which it runs?

A. Yes sir.

Q. 133. Do you know where Moore's cabin clearing or Glen Cove is?

A. I know where the Glen Cove is.

Q. 134. Where is that?

A. There is a place called Glen Cove Gap marked on this map.

Q. 135. Isn't there an old clearing there indicating that there had been a house there one time?

A. I was not right at Glen Cove. I was up at the top of the mountain.

Q. 136. How close does the clearing run there going a little bit to the junction?

A. Right at Glen Cove. There was no timber there for two or three acres.

Q. 137. There was an open place there?

A. For two or three acres, I wasn't there but the one time.

Q. 138. Didn't it indicate to you as a woodsman that there had been a clearing there at one time?

A. There had been several trees cut down there and it had been used as camping place there for some time. I don't know whether there had been any clearing made there.

Q. 139. Then it had been used as an old camping ground for a number of years?

A. Yes sir, I was told that it had been.

Q. 140. Haven't you found from your experience as a woodsman that you are likely to find all kinds of hacks on trees?

A. Oh yes, quite frequently find that.

Q. 141. Now Mr. Burns I believe you said that you went around this line, which you understand to be the contention upon the part of Tennessee, from Jenk's Knob to what you mark on the map as Rocky Knob and on around to what you mark McDaniel Bald and thence on around to a point that you have designated as "County Corners"?

484

A. Yes sir.

Q. 142. I see you have marked a line between McDaniel Bald and County Corners as the county line, haven't you?

A. Yes sir.

Q. 143. That is the county line between Cherokee County, N. C. and Monroe County, Tennessee, isn't it?

A. Graham County.

Q. 144. The line between Graham County, N. C. and Monroe County, Tennessee?

A. Cherokee County. That depends on where the State Line would be.

Q. 145. If Monroe County runs to McDaniel Bald then that line that you have marked as the "County Line" is the line between Graham County, N. C. and Monroe County, Tennessee?

A. Yes sir. If Tennessee would acquire the line beyond the headwaters of Tellico than it would be Monroe County.

Q. 146. Then why do you say "if Tennessee would acquire the line"?

A. Because that line is in dispute.

Q. 147. Then you run that line around Jenk's Knob to McDaniel Bald?

A. Yes sir.

Q. 148. That line divides the waters between North Carolina and Tennessee?

A. Yes sir.

Q. 149. And the middle fork or part of the middle fork of Tellico River arises just under and to the West of McDaniel Bald, doesn't it?

A. Yes sir. I suppose it is called the middle fork. I am not very familiar with the Tellico waters, but there is a fork runs up there. I think it is the middle fork.

Q. 150. Then on the East the waters of Snow Bird run East and away from that main dividing ridge?

A. Yes sir.

Q. 151. And when you are around up here on Jenks Knob and the point that you have marked Hangover between Hangover and McDaniel Bald and come down that line toward "County Corners", you look down to State Ridge don't you?

485

A. Well there is—you can't see the State Ridge from all points of it. Some places you can see and some you can not.

Q. 152. From such points as you can see State Ridge you see State Ridge below you, don't you?

A. Part of State Ridge towards Tellico River is much higher than some of those other points.

Q. 153. Is it higher than McDaniel Bald and Hangover and Rocky Knob?

A. Those are all high points.

Q. 154. Then at Rocky Knob you are much higher than any part of State Ridge, aren't you?

A. I can't say for sure, but I believe it is lower.

Q. 155. What is the elevation of Rocky Knob?

A. I never took the elevation. I only know from the Government sheet.

Q. 156. You know the elevation that you designate as Hangover between Rocky Knob and McDaniel Bald?

A. I never took any elevation.

Q. 157. How much higher does your eye tell you that McDaniel Bald is than State Ridge?

A. The part of State Ridge known as Grassy Top, I believe it is as high a point as Rocky Knob and Hangover but possibly not quite as high. It stands about as Laurel Top, not quite as high as McDaniel Bald. It is about as High as Hangover and Rocky Knob.

Q. 158. Well I put it to you differently—going Southwesterly along what you designate as State Ridge from County Corners for a little ways, you are on a very high ridge, aren't you?

A. Yes sir.

Q. 159. How far?

A. The elevation of the State Ridge keeps up fairly well for about between two and three miles I would say and the height of it bears up very well until it begins to descend towards the Tellico river.

486 Q. 160. It descends towards Tellico river all the way from County Corners?

A. Yes sir.

Q. 161. Did you go over that State Ridge on a clear day?

A. I have been over it several times.

Q. 162. Have you ever been over it on a clear day?

A. Yes sir I have.

Q. 163. From that State Ridge aren't McDaniel Bald and Hangover and Rocky Knob plain to be seen?

A. I believe they are. I don't know from every point.

Q. 164. Don't you have to look up to the top of every one?

A. They are so far distant, possibly you would have to put a level on them to tell.

Q. 165. Mr. Burns you have examined the United States geological maps in regard to those elevations, haven't you?

A. Yes sir, I have seen them a number of times.

Q. 166. You never undertook to take any elevations then along State Ridge?

A. No sir, not along State Ridge.

Q. 167. Did you ever undertake to take any along this line leading from Jenks Knob around to the County Corners?

A. Yes sir, but I never worked up those elevations from my notes

Q. 168. How much land is drained by the Tellico river which

you say you crossed running along the State Ridge Eastwardly from County Corners?

A. You mean the whole part in the disputed territory?

Q. 169. Yes sir.

A. I never made a calculation of it, it would be just a guess.

Q. 170. Look at your map—you can tell.

A. I would say between 15,000 and 20,000 acres.

Q. 171. That is a considerable water shed, isn't it?

A. Yes sir.

Q. 172. Mr. Burns you know about an exhibit that was filed to the deposition of Mr. S. S. Gannett composed of four sheets of the United States Geological Survey Map showing generally this territory in dispute, don't you?

A. Yes sir.

487 Q. 173. I here lay before you four sheets, not yet joined together, designated as "Loudon Sheet—Tennessee", "Nantahala Quadrangle—North Carolina-Tennessee," "The Murphy Sheet—Tennessee-North Carolina", and "The Knoxville Quadrangle—Tennessee-North Carolina", and ask you if these four sheets are similar to the ones which make up that exhibit to Mr. Gannett's deposition?

A. I think there was only a part of the Knoxville sheet.

Q. 174. But they are the same as far as they show the territory in dispute?

A. Yes sir that is my recollection.

Q. 175. Now these sheets purport to show the elevation on that line running around the headwaters of Tellico, do they not?

A. Yes sir.

Q. 176. The one marked "Murphy Sheet" shows the line running from the point where it turns due South to the Georgia line as running around and to the East of the headwaters of the Tellico river, doesn't it?

A. Yes sir.

Q. 177. It has marked on it Beaver Dam, Rocky Knob, McDaniel Bald and Laurel Top?

A. Yes sir.

Q. 178. I will ask you if this map the "Murphy Sheet" doesn't show that the elevation at Beaver Dam is 4280 feet, or is it 4780?

A. 4280 is the way it looks to me.

Q. 179. Just East of the line a little ways Northeast from Rocky Knob I see that the elevation is marked 3500. Is that right?

A. No sir, that 3500 is just the elevation of that contour. It must be a little over 4000 feet.

Q. 180. I don't mean that Rocky Knob is 3500 feet, but that contour down there where 3500 is written is 3500 feet above sea level?

A. Yes sir.

Q. 181. Then how much higher than that is Rocky Knob according to this government map that we are looking at?

488 A. The contour shows 4300 feet the way it looks to me. It may be a little more than that.

Q. 182. What is the elevation of McDaniel Bald according to this map, the "Murphy Sheet"?

A. It looks like 4662.

Q. 183. What is the elevation of Laurel Top, according to this map?

A. Something over 5300 feet.

Q. 184. Now how far Southeast of Laurel Top is it on your map to "County Corners"?

A. Well it is a little less than a half mile is my recollection of it judging from the sectionizing on this. I can give it to you exactly by getting my notes.

Q. 185. Is this place right here Grassy Top?

A. That is what I take it to be intended for on that sheet.

Q. 186. How far is it on your map from Laurel Top to Grassy Top?

A. It is about a mile, may be a little more, may be a little less.

Q. 187. Well as shown on this government map "Murphy Sheet", Grassy Top is within Tennessee, isn't it?

A. Yes sir, according to the way they have the latest State Line on the sheet it is.

Q. 188. I don't see any elevation marked there on this government map on Grassy Top, do you?

A. No sir, only by the contours. You can approximate it. It shows a little over 5200 feet. It shows the 5000 contour running around and then the 200 running around and it makes it 5200, or a little over.

Q. 189. Now then looking at this government map I point with my pencil along what purports to be a ridge. Am I following what is supposed to be State Ridge?

A. Yes sir about to the point where your pencil is now I take it to be.

Q. 190. After leaving Grassy Top and going Southwesterly to the Tellico River, what is the next point to which elevation is given in figures on this map "Murphy Sheet"?

489 A. I don't believe I quite catch your question.

Q. 191. After leaving Grassy Top and going Southwesterly to the Tellico River, what is the next point to which elevation is given in figures on this map "Murphy Sheet"?

A. Every contour 5000 feet is marked, I had 500 instead of 5000.

Q. 192. I see a point down there that is designated on this map as 3500.

A. 3500 shows.

Q. 193. And then further on down I see 2500?

A. Yes sir. When you get to the Tellico River it seems to be between 3000 and 2500 when the State Ridge comes to the Tellico River.

Q. 194. I wish you would point out to me on this government map where ought to be the point which you have designated on your map as "Jenks Knob"?

A. This point right here I take to be Jenks Knob, something over a mile from Rocky Knob or about a mile, may be a little more or a little less.

Q. 195. You mean a mile in what direction?

A. Well it would be Northwest from Rocky Knob. Let me look for it again. No, the scale of this government sheet is about two miles to the inch. It would be something like two miles from Rocky Knob.

Q. 196. Then it is about two-thirds of the way from Rocky Knob going to Beaver Dam?

A. Yes sir. I believe I am mistaken about that Jenks Knob. I think it must be at least three miles or three and a half miles from this ridge coming up here.

Q. 197. And how far Northeast on the government map from Beaver Dam Bald?

A. Well as it appears on the government map it is not very far from midway between—possibly a little bit closer to Beaver Dam Bald.

Q. 198. Now take a pencil and mark on the government map where you think Jenks Knob ought to be—what is the scale of this government map, "Murphy Sheet"?

A. 1 and 125000.

Q. 199. What is the scale on your map which you have
490 exhibited with your deposition showing both Beeaver Dam and Jenks Knob?

A. 2000 feet to the inch.

Q. 200. Now you have a copy of your map showing both Beaver Dam Bald and Jenks Knob. From that and this government map mark on the government map as nearly as you can where you think Jenks Knob ought to appear on the government map?

A. That is asking something of me that I can't do, because the topography on the government map is not exactly right—it doesn't represent the country exactly right.

Q. 201. Isn't it about where I am making a cross in red ink on this government map and placing a "J" and a "K" to indicate Jenks Knob?

A. Well it comes pretty close to that point, but my knowledge of the country and my survey as to the relative position between Beaver Dam Bald and to it doesn't represent the Jenks Ridge leading down from the Jenks Knob toward the Tellico river.

Q. 202. Now what do you think represents the Jenks Ridge leading down from the junction toward the Tellico river on the government map?

A. It doesn't appear at all.

Q. 203. Mr. Burns, doesn't there appear on this government map from the point where I placed the cross in red ink down toward the Tellico river a well defined ridge?

A. Yes sir. The ridge seems to break as it gets down toward the Tellico river. One branch further up the stream than the other.

Q. 204. Well taking the right hand of this fork—it runs down close to the Tellico river, don't it?

A. Yes sir but that ridge will cross further down than where the Jenks Ridge comes to the river. The ridge that is on the government map that we are talking about will strike the river further down than where the map shows.

Q. 205. Now point out on this government map by any character

satisfactory to yourself where you call the *the* State Ridge reaches the Tellico river?

A. The head of Tellico river as represented on that map is
491 not exactly as it is on the ground and I can't designate it.

Q. 206. The fact about it is this ridge running down from the point that I have indicated as Jenks Knob on the government map reaches the river below the butt of the State Ridge, don't it?

A. I don't know that I ever said that that was Jenks Ridge, that ridge that is shown on the government map by the red cross—where the red cross is. The State Ridge comes to the Tellico river just a few hundred feet above what is called Rough Ridge Creek and I don't see Rough Ridge Creek on that map. The muddy fork of Tellico comes to what I know as John Meadows Gap.

Q. 207. Then going back, point out on this government map, the "Murphy Sheet" where you think Jenks Knob is?

A. Between this ridge leading—I don't know which fork leading from this red cross on the map is Jenks Ridge—from the red cross is Jenks Knob, but neither one accurately represents the Jenks Knob.

Q. 208. You don't show on this map of yours, the big map exhibited with your original examination, the West fork of Tellico river, do you?

A. No sir, I don't show it on my map.

Q. 209. Mr. Burns, is it not a fact that the dividing ridge running from Beaver Dam Bald around by Jenks Knob, Rocky Knob, McDaniel Bald to County Corners is a well defined mountain range?

A. Well it is the main water shed. It has got a number of high peaks on it and a lot of deep gaps. It is a well defined water shed.

Q. 210. Now I call your attention, Mr. Burns, to that part of the government map that is marked the "Nantahala Quadrangle-North Carolina-Tennessee Sheet", on which is laid down Stratton Bald and Hangover. What elevation does this government map give to Stratton Bald? Isn't it about 5000 feet?

A. Something over 5400 as shown by the topography.

Q. 211. What is the elevation given to Hangover?

A. A little over 5100.

Q. 212. And it shows a well sustained ridge or mountain top between Stratton Bald and Hangover, doesn't it?

A. Yes sir.

492 Q. 213. Now I read you the following elevations along a ridge over which I am passing my pencil leading from Hangover a little bit West of North around to the Tennessee river, and I will ask you to examine this "Nantahala Quadrangle Sheet," and state if the following elevations do not appear along that ridge in the order I read them: The first down a little way from Hangover 5,000, a little way down from the extreme top of Hangover, The next going on the ridge toward the river is 4,500. The next 4,000. About how far is that point where 4,000 appears Northwest of Hangover?

A. That looks to be about a mile and a half.

Q. 214. Then the next still down the ridge is 3,500?

A. Yes sir.

Q. 215. How far Northwest of the 4,000 line is the 3,500 line?
A. Looks to be about a mile and a half.
Q. 216. Then the next still down the ridge is 3,500?
A. Yes sir.
Q. 217. How far Northwest of the 4,000 line is the 3,500 line?
A. Looks to be about a mile and a half.
Q. 218. Then the next 3,000. How far West of the 3,500 line is the 3,000 line?
A. Something over a mile, may be a mile and a half.
Q. 219. Then the next is 2,500. How far Northwest of the 3,000 contour is the 2,500 contour?
A. About a half a mile, or a little more.
Q. 220. Then the next contour marked in figures is 2,000, is it not?
A. Yes sir.
Q. 221. How far from the 2,500 contour is the 2,000 contour?
A. A little over a half mile, looks to be.
Q. 222. Then going on to the river the next contour marked in figures is 1,500, isn't it?
A. Yes sir.
Q. 223. How far from the river is that 1,500 contour?
A. Looks to be about three miles.
493 Q. 224. What?
A. Two miles to the inch, about a mile and a half.
Q. 225. Now look at that 1,500 contour again please, and tell me how far it is from the river?
A. I guess I have got them all too far looking through the magnifying glass. I guess that is about two miles.
Q. 226. Isn't the 1,500 contour right there where I have put the point of the pencil?
A. Yes sir.
Q. 227. That isn't two miles from the Little Tennessee River?
A. No sir.
Q. 228. I asked you how far it is from the river—you misunderstood my question—how far is the 1,500 contour on this extension of the Hangover Ridge from the river as marked on this "Nantahala Quadrangle Sheet"?
A. Something like a quarter, may be a little less than that.
Q. 229. Now how far on the other side of the river is it until it reaches a like elevation of 1,500 feet on this government map?
A. It looks to be about the same distance, may be a little bit further, or about the same distance.
Q. 230. Now according to this government map, what is the elevation of the river at the point between these two 1,500 contours that I have just spoken about?
A. Between 1,000 and 1,200 I would say.
Q. 231. Now that point that we have just been talking about midway between these two 1,500 contours on this "Nantahala Quadrangle Sheet" is where, according to the Tennessee contention, the State Line crosses the river, isn't it?
A. Yes sir.

Q. 232. Now what do you understand each one of those little brown lines to indicate?

A. Represent every 100 feet in elevation.

Q. 233. And the little circles, like that (indicating on the map) which appear between the 1,500 contour and the 2,000 contour South of the river marks a sort of a peak or a higher place?

494 A. Yes sir the elevation is rising from there.

Q. 234. Then from the 1,500 contour just South of the river the elevation is rising and increasing to a point where there is a little circle?

A. Yes sir.

Q. 235. And what do those contours on the map show to be the elevation of that little circle?

A. Well shows it to be, the elevation of that little circle, is 1,900 feet.

Q. 236. How far is that little circle South of the river according to Tennessee's contention from the point where the State Line crosses?

A. About three quarters of a mile.

At 12:10 P. M. November 30, 1910, the further cross-examination of D. B. Burns was adjourned until 1:45 P. M. at the same place.

At 1:45 P. M., November 30, 1910, the further cross-examination of D. B. Burns was resumed, pursuant to adjournment.

Present (For North Carolina): General Theo. F. Davidson. Ben Posey, Esq. F. A. Sondley, Esq. (For Tennessee): General C. T. Cates, Jr. T. E. H. McCroskey, Esq.

D. B. Burns, resuming the witness stand for further cross-examination, deposed as follows:

Cross-examination continued by General C. T. Cates, Jr., on behalf of the State of Tennessee:

495 Q. 237. Now Mr. Burns on the line run by you and shown on your large map and which you have represented to be the State Line from the Turnpike Road North of the river all the way to Jenks Knob, you say you found a great many trees that were marked?

A. Yes sir.

Q. 238. Some of these trees you blocked and found annual rings on the blocks indicating that the cut in the timber was made some 86 or 87 years ago. I will ask you to state if you didn't find a great many trees along that line as you have run it and claim it to be the State Line that bore State Line marks that were not old enough to have been made in 1821?

A. It seems like there has been a line remarked along there over the same ground on which I run the State Line, marked about 57 years ago, and some of the blocks that I exhibited to my deposition showed t-o such marks—some showed the original marks and some the later ones.

Q. 239. Which blocks showed the two sets of marks?

A. The one I blocked showed two marks on the Smoky Mountain side. It was a hickory, block No. 2 stated in the schedule; had two sets of marks on it.

Q. 240. And that was North on the Blount County side and on the line that is undisputed?

A. Yes sir.

Q. 241. Now you didn't find any trees along this Slick Rock Creek, as you have marked it, carrying both 1852 or 1853 and 1821 marks, did you?

A. I don't think that I found any carrying 1853 marks, don't think that I found any of those recent marks up Slick Rock.

Q. 242. Do you mean you didn't find any trees up Slick Rock bearing any 1852 or 1853 or 1821 marks?

A. The old section line where we left Slick Rock Creek going up Little Fodder Stack we found 1857 marks.

Q. 243. Now do you mean to say Mr. Burns that you didn't find any trees on both the East and West side of Slick Rock Creek as you come up it that bore marks made in 1852 or 1853 or somewhere between 1850 or 1860?

A. There is some land corners up Slick Rock, but I am
496 speaking of State Line marks.

Q. 244. Didn't you find some trees up there that bore the State Line marks made in 1852 or 1853, or made some where between 1850 or 1860?

A. I don't remember of any but those land corners.

Q. 245. Then all of the trees that you found up Slick Rock Creek there on the East or West side of it bearing State Line marks you just attributed it to 1821?

A. There are a number of them that we blocked and counted back to the 1821 marks.

Q. 246. Some of the land corners marked in the fifties?

A. I don't remember of any recent corners along there now.

Q. 247. How were the land corners marked?

A. With three hacks the way the line approaches and the way it leaves and the witnesses to the corner is made by a blaze below two hacks, and the State Line marks are marked with three hacks for a side line and a blaze below two hacks for a fore and aft tree.

Q. 248. Nevertheless those are the same as the State Line marks that you found on those trees which you say were marked between 1850 and 1860?

A. The witnesses to a land corner are only marked on one side with a blaze and two hacks and the State Line marks are marked on two sides. That is the difference between them.

Q. 249. Nevertheless you found three hacks on many trees and two hacks above a blaze on many trees, the marks of which were not made in 1821 up that Slick Rock Creek?

A. We found those few land corners that I speak of, and they were marked on two sides, and a side line with three hacks is only marked on one side.

Q. 250. Then you assumed that all of these trees up Slick Rock

that you didn't block and which you have numbered here on your map were made in 1821?

A. Yes sir. I made a thorough search of the trees on the undisputed section and familiarized myself with the age of the marks and blocked some on the indisputed section and also blocked some on the disputed section over on Slick Rock and found that the
497 resemblance of the marks was the same all the way through, and those are the trees that I have marked and located on this map, and believe them to be all State Line trees.

Q. 251. Mr. Burns, the appearance of a mark and its probable age depends very much on the probable age of the tree?

A. Yes sir, and whether it is exposed to the weather very much. Of course one familiar with timber can tell pretty much.

Q. 252. In 1908 when you went in there and in 24 hours located this line up Slick Rock Creek you had had not more than two years' experience in the woods, isn't that true?

A. I was raised in the woods and my father was a lumberman, and I was familiar with old line trees because I was also an engineer.

Q. 253. How many trees had you blocked before this?

A. In West Virginia and Pennsylvania?

Q. 254. You had been surveying in West Virginia about two years?

A. I was born in Pennsylvania. I then followed it as an occupation until I graduated in 1901 and I have done a great deal of it since I was 16 years of age.

Q. 255. No possibility about you being mistaken about those marks?

A. Any one liable to be mistaken, and those that I re-blocked I am positive about that.

Q. 256. Any possibility about you being mistaken about that?

A. Always a possibility about any one being mistaken, but I don't think that I am.

Q. 256. Now in your original examination you state that you continued the survey up Slick Rock Basin. In your original examination and the copy as given to me on page 282 you state that you "continued the survey up Slick Rock Basin to Big Fodder Stack lead and found a number of trees marked and blocked a fore and aft tree, blocked it on both sides." What tree was that—was it No. 41?

A. No. 47.

Q. 257. What block is that?

A. One was block No. 6 and one block No. 7. I filed one of them at Asheville. I forget whether it was No. 6 or 7. The record will show.

498 Q. 258. What record is that?

A. The deposition taken at Asheville.

Q. 259. Won't your map here show?

A. Yes, sir.

Q. 260. Which tree is that?

A. 47. We blocked both sides of the tree.

Q. 261. Why did you cut the blocks out on both sides of that tree?

A. I think I stated in my former deposition that Block No. 6 was taken out by Mr. Denton who was surveying with me at the same time I was, and when we got to it he blocked one side and I blocked the other side.

Q. 262. You say you blocked both sides of it?

A. I don't think I stated that I blocked both sides of it. I think I stated Denton blocked one side and I blocked the other side.

Q. 263. So when you took the blocks out of both sides of it you removed both the fore and aft blocks?

A. Yes sir.

Q. 264. You knew that Denton had cut out the block on one side, destroying the marks, and then you proceeded to cut out and destroy the marks on the other side?

A. Yes sir.

Q. 265. Thus absolutely making it impossible to tell whether that tree was a State Line tree?

A. Only by the blocks we produced. That is the only way we can tell now.

Q. 266. So that tree as it stands there can never hereafter be recognized as a State Line tree by a fore and aft mark?

A. No sir, the original marks have been taken out.

Q. 267. And if Denton had taken a block out before that and it counted right, why did you take out the other block?

A. Just to say that I took out a block personally.

Q. 268. Has Denton been examined in this case?

A. Two years ago at Knoxville.

Q. 269. You were examined as a witness for the Hopkins claimants under the bill of review in the Circuit Court of the
499 United States, were you not—in the Circuit Court of the United States at Knoxville?

A. About two years ago.

Q. 270. And that was after you had done the running of this line and the blocking of the trees referred to?

A. Up to the junction.

Q. 271. What did you do with those blocks that you used as testimony in the Circuit Court of the United States?

A. I filed them as exhibits to my deposition at the time and nobody took charge of them at the time it was all over and I took them to my room and preserved them, and I took them home on Morgan Street.

Q. 272. Who requested you to do that?

A. I believe it was Mr. Cozad.

Q. 273. So those blocks really are a part of the record in the Circuit Court of the United States at Knoxville?

A. Yes sir.

Q. 274. Well look at tree No. 41, and tell me who blocked that?

A. Why Denton and me were both present when that was blocked and blocked it together.

Q. 275. Now isn't that the tree in which Denton had taken out the block before you?

A. No sir.

Q. 276. In your examination in chief you were asked this question:

"What marked trees did you find from the Tennessee river to the point from which you departed Slick Rock Creek?"

Your answer reads:

"Tree No. 41, block No. 4; tree No. 36, block No. 3, and a block that had been taken out by Charles Denton in August before."

Q. Had the trees been blocked before?"

"A. Yes sir. Charles Denton pointed that tree out to me and afterwards produced the block which was taken from the tree, but I was not present when it was blocked."

Is that correct?

500 A. Did it speak about block No. 4 or block No. 3 in that answer? The first part of the answer in regard to No. 41 is correct, and as to block No. 3 there must have been an error in the stenographer in getting down the answer correctly. It meant that block No. 3 was taken out by Denton in the August before I was there.

Q. 277. Now where is block No. 3?

A. Block No. 3 in tree No. 36?

Q. 278. Now that tree is on the East side of Slick Rock, isn't it?

A. Yes sir.

Q. 279. Now you don't know whether that block No. 3 showed annual rings or not?

A. He produced the block itself, but I started to count the growths on the block afterward, but he took the block out.

Q. 280. So you personally don't know anything about that block No. 3?

A. Only what Denton told me is all.

Q. 281. You blocked No. 41 on both sides?

A. No. 41 was only blocked on one side. It was a side line tree. Both present when that was blocked—hemlock tree.

Q. 282. Now, Mr. Burns, I call your attention to your testimony as it is set out in the copy furnished to the State of Tennessee, on page 282, in which you state in response to the question: "What did you find along there"—that is up Slick Rock, as follows: "I found a number of marked trees. In the first two miles they were very plentiful. Then I continued the survey up the Slick Rock Basin to Big Fodder Stack lead, and found a number of trees marked, and blocked a fore and aft tree, blocked on both sides."

Do you mean by that that you did block it on both sides?

A. The tree that we just spoke about a while ago?

Q. 283. Then immediately following your answer is the question: "Was it already blocked?" And your answer "No sir, we blocked it."

That meant that you blocked it on both sides?

A. That is the tree that I spoke about a while ago, tree

501 No. 47 that I just explained to you.

Q. 284. Now on page 284 your answer at this place was

dealing with the trees which you found from Slick Rock Basin to Big Fodder Stack lead, wasn't it?

A. No sir, I think I was including in that answer trees clear up to Big Fodder Stack.

Q. 285. Now on page 284, in your original examination in chief you were asked:

"Were those trees up that ridge side line or fore and aft trees, or some one and some the other?"

And you answered:

"Some one and some the other. We blocked tree No. 47,—blocked it twice,—it was a fore and aft tree."

"Q. That was where you turned up the ridge from Slick Rock?"

"A. Yes sir."

A. That is correct.

Q. 286. Where was the tree up on the ridge that you blocked twice?

A. This tree No. 47 was just starting up on the ridge, just a little from the creek, right at the point of the ridge you might say.

Q. 287. Then you didn't block any tree from 47 until after you got out on the lead from Big Fodder Stack to the Junction, did you?

A. No sir.

Q. 288. Now how far is it Mr. Burns from this point where you have got tree No. 53 marked on your map to the point where you have located tree No. 55?

A. Mile and three-tenths.

Q. 289. And in that distance, as you have laid it down here on this map, you have only located one tree, No. 54?

A. Yes sir.

Q. 290. You didn't block that tree, did you?

A. No sir.

Q. 291. What was the character of the ground from tree 53 up to tree No. 55?

502 A. The most of that distance in there was just on that ridge, just scrubby stuff growing over it, believe it has been burned—very few trees were marked.

Q. 292. Why didn't you block tree No. 54?

A. Didn't deem it necessary, I don't suppose. Didn't want to destroy all the original marks, just wanted to make sure we was following the original marked line.

Q. 293. But occasionally you did destroy all of them on the same tree, didn't you?

A. Yes sir.

Q. 294. Now, Mr. Burns, I call your attention to the place where you have located on your map No. 45, tree No. 45, and ask you how far it is from that point to where you have located tree No. 46 around up that creek the way you run it—between three and four miles, isn't it?

A. A little bit less than three miles.

Q. 295. You didn't find a tree in that distance bearing any kind of marks, did you?

A. Well I didn't find any tree in that distance that I thought was State Line marks.

Q. 296. Did you find any trees in that distance bearing marks made between 1850 and 1860?

A. I don't think I found any trees in that distance that was either State Line marks or land marks, just only old trail marks.

Q. 297. There were trail marks in that country, weren't there?

A. Not up that creek—no trail that I seen or heard of.

Q. 298. No trails along that creek where it runs into the river, where Cheoah or Tellassee path crosses it?

—. The only trail that I know of through there is a continuation of the old Belding trail I suppose and crosses the Slick Rock Creek possibly a half mile below Big Slick Rock.

Q. 299. What do you know about the old Belding trail?

A. The Belding trail, an old trail that comes up near
503 Johnson's and crosses Big Creek and Bear Creek.

Q. 300. Now you mean to say there is no path up Slick Rock from its junction with the river to where that Cheoah or Tallassee trail crosses Slick Rock?

A. The only time that I ever was up there I surveyed a line pretty nearly in the creek. I never saw any trail.

Q. 301. Then you don't know?

A. I think there is a trail.

Q. 302. Were you down in the creek?

A. Yes, first on one side and then the other side dodging the rough places and the laurel.

Q. 303. Then you don't know whether there is a path up there?

A. Don't think there is a path all the way up the creek. Think there is a trail that crosses it in some places, no good trail up there.

Q. 304. What do you call a "good trail"?

A. One that is open and you can follow. Lots of trails in the mountains that are very dim.

Q. 305. Now you are not willing to admit by any possibility that there was any trail up there that a man could use and follow?

A. As I told you I never saw any trail up there. Most of it very rough. That comes out of a gorge. No good trail or patch up there that I know of.

Q. 306. How long were you in that country between the mouth of Slick Rock and where that Cheoah or Tellassee trail crosses Slick Rock?

A. I was, I suppose, between two and three days running up there. Some time I made about a mile a day and sometimes a little more.

Q. 307. How far above the mouth of the creek does the Tellassee trail cross?

A. What do you mean by the Tellassee trail?

Q. 308. Or the trail crossing through Slick Rock Gap?

A. It is about two miles.

Q. 309. Now on page 285 of your testimony, direct examination, as furnished to the State of Tennessee, I notice you say that the

"State Line" as you run it I suppose, "comes up to the lower
504 side of the highest peak, but not to the top of the highest point" of Fodder Stack. Is that what you mean?

A. Yes sir, Fodder Stack, I don't know whether I can express it how it is or not. There is one part of it—it seems the top of it is from a quarter to a half a mile across, and the top of it kinder slopes like that (Indicating a slanting position), and the highest point is not where the State Line comes up, and it comes up to the lower side of the highest peak.

Q. 310. Then the line as you run it never did reach the highest point of Fodder Stack mountain?

A. Both stands—both points stand up pretty high, but it did not reach the highest point.

Q. 311. Then Mr. Burns the line as you run it don't go to the extreme heighth of Fodder Stack mountain, did it?

A. Yes I would say that it went to the top of Big Fodder Stack, but not to the highest point of elevation.

Q. 312. What is the difference between the highest point and the highest elevation of Big Fodder Stack?

A. What I mean by Big Fodder Stack, I include both of the points, the extreme heighth and one that is not quite so high. This ridge that I speak of comes up to Big Fodder Stack, but it did not reach the highest elevation.

Q. 313. Isn't the highest elevation of Big Fodder Stack, the extreme heighth of Big Fodder Stack?

A. Yes sir.

Q. 314. Then the line as you run it didn't reach the highest point of Big Fodder Stack?

A. The highest peak.

Q. 315. Then isn't the Fodder Stack peak on Fodder Stack ridge a part of it?

A. I suppose the Fodder Stack ridges were really include—would really include the ridge as far as the Little Fodder Stack around pass the Junction. I always understood that is Fodder Stack mountain.

505 Q. 316. Then the Fodder Stack peak is on that Fodder Stack ridge?

A. Yes sir, as I understand the Fodder Stack ridge.

Q. 317. Then is this point which you have marked "Big Fodder Stack" intended to designate the highest point on that ridge?

A. Why I intended Big Fodder Stack to represent all this hachuring or rising as you might designate it, to include Fodder Stack.

Q. 318. Where is the highest point of Big Fodder Stack—right opposite the letter "K" in Fodder Stack?

A. Yes sir.

Q. 319. Now how far is that where you turned Southeast to go to the Junction?

A. I could give you that exactly if I had my field notes, but they are not here. It is a little bit less than a quarter of a mile I would say.

Q. 320. Now when you were taking bearings which you were

talking about in your original examination from the North side of the river you took them from the highest point of Big Fodder Stack, didn't you?

A. In taking the general bearing of the map you mean that I spoke of?

Q. 321. Mr. Burns, you have stated a number of times in your original examination from some point over on the North side of the river you took a bearing from Big Fodder Stack. Didn't you take that bearing off of the highest point on Big Fodder Stack?

A. Well, I didn't try to strain it that fine when I was taking bearings there.

Q. 322. Wasn't you looking to the highest point on Big Fodder Stack?

A. If you take the bearing at the point where we was running to on the other side of the mountain by a magnetic needle it varies.

Q. 323. From what point did you take the bearing on the North side of the river, the highest point of Big Fodder Stack, or the highest point of Fodder Stack ridge?

A. The bearing on the map of 1821 shows a bearing on the Tennessee river and in crossing the Tennessee river turning Southwest I drew a straight line to that disputed course where it crossed
506 the river on the map of 1821, and I took a North course and I set my instrument on the East side of the Tennessee river on that bearing and that general course took me right up to Big Fodder Stack, and I don't remember whether it went to where the State Line comes to now, or whether it went a little to the left or right, but that bearing took me up to the Big Fodder Stack. I have every reason to believe that this State Line when it was run it was run by a magnetic compass and it varies and there has to be a variation allowed for a magnetic compass unless there had been a true meridian established in that country at that time and get the true variation of the magnetic needle, but you can't use the old magnetic needle of that day and hope to get any closer than a quarter of a mile in that distance, so as we was following the magnetic needle on a map that the courses had been established by a magnetic compass we could not come to the highest or lowest point of Big Fodder Stack, but any engineer that understands surveying can take this general bearing and which I found was sufficiently close to give me the location of the country in which I expected to find the old marked line, as I understood it in the beginning that they followed natural objects, and as it followed the marks along a stream I expected to find the marks up Slick Rock Basin until it left the creek.

Q. 324. That was the very thing I intended to ask you, but I have forgotten whether I asked you whether when you cited, as you have stated a number of times, or took a bearing on your transit from the North side of the river, you cited back that bearing to the highest point of Big Fodder Stack, or to a point lower than the highest point on Big Fodder Stack?

A. I simply obtained a bearing from the map of 1821, and I set my bearing of the compass upon that.

Q. 325. Then you decline to answer whether you did take a bearing to the highest point of Big Fodder Stack?

A. Nor sir, I don't decline, I am telling you the truth just exactly what I did.

Q. 326. I wasn't asking you about taking a bearing from the map of 1821, but I will now. How did you determine the bearing on that map of 1821?

A. From the North point shown on the map of 1821.

507 Q. 327. You mean this star figure out here at the end of Exhibit "A" to Onley Williams' deposition?

A. Yes sir.

Q. 327. And I believe you have said that the bearing and the distances measured out surprisingly close?

A. Yes sir. I think you get confused a little bit and may be I don't understand your question. After making the survey I tested the bearings from my survey where I crossed the Tennessee river to the top of Big Fodder Stack and then I compared that with the bearings that I got from the original map of 1821.

Q. 238. Didn't you state a while ago before you crossed that river that the line run up the river and up Fodder Stack and that you run that line and proved it by finding trees on it?

A. Yes sir, that I took that line from bearings found on the map of 1821. I could determine from that general bearing whether it went up towards Little Fodder or Hangover or Slick Rock Creek. I determined that it must go one of the three places.

Q. 239. There is not a course or distance laid down on this map of 1821, is there, by degrees or distance?

A. There is no figures showing degrees and distances. The only courses you can get from it is by platting the map.

Q. 330. You have examined this map carefully?

A. Yes sir.

Q. 331. You know that the last call is crossing the Hiawassee river, a direct South line to the Georgia line in the report of the commissioners?

A. Yes sir.

Q. 332. Now is that line as laid down there a direct South line crossing the Hiawassee river and running to the Georgia line?

A. I did test that and I don't believe we did find it South according to the plat of the map.

Q. 333. Then you didn't find it—I mean you found it several degrees off of the South line?

A. Some degrees, but not exactly South, very closely so.

508 Q. 334. Now there are a lot of circles on the State Line as marked on this map of 1821, which you say are mile circles. Is that it?

A. That is what I understand them to be.

Q. 335. Are those mile circles equally distant apart?

A. The only way that we have to determine that would be by the scale and the scale of the map is very small and it would be very hard to scale it exactly from the original courses as shown on the

map. Some of the circles would show it to be a mile and some a little less than a mile.

Q. 336. And generally speaking between most of those mile circles the course seems to be straight, don't it?

A. Not between most of them.

Q. 337. Between a great many of them?

A. A great many of them show straight and a great many of them an angle between the mile circle.

Q. 338. We will take between these mile circles—between the second and third and third and fourth and fourth and fifth, just North of the path to Tellassee on the North Side of the river. Those are practically straight, aren't they?

A. They are so shown.

Q. 339. And that shows a straight course, don't it?

A. Yes sir.

Q. 340. Now do you know of a single mile along there where the course for a full mile on top of the mountain would be exactly straight?

A. That is further back than I surveyed, I don't know.

Q. 341. Then I point you out mile circles on the South side of the river the lines between which are absolutely straight. Do you know a single mile over there where for a full mile the course is the same?

A. No sir. All the survey I made I never got a mile that was one course.

Q. 342. Between those mile circles the top of the mountain meanders and jags about?

A. Yes sir.

Q. 343. Now if you set the compass to run straight for a mile and take that course for a mile and run around the top of the
509 mountain with its meanders the line as actually run from one of those points on a straight course would be much longer than a mile wouldn't it?

A. Yes sir, depended on how crooked the ridge was, of course.

Q. 344. Mr. Burns you have stated in substance in your original examination that you went on the mountain North of the river and from your bearings you took from that point you convinced yourself that the line must necessarily run up Slick Rock Creek, didn't you?

A. Well that comes in that old general bearing that I spoke about.

Q. 345. That was the result of the work you done on the North side of the river?

A. I made that test before I did any work on the North side of the river. As soon as I made my tests up there I made my observation and then where it crossed the Smoky Mountain began my survey on the undisputed part of the line.

Q. 346. And you explained at some length how close the bearings that you took over there on the North side of the river are to the commissioners' bearings, or the bearings upon that map, haven't you?

A. Yes sir, I compared the two.

Q. 347. And pronounced them surprisingly close?

A. Yes sir and pronounce them surprisingly close yet. They are.

Q. 348. Well if over there on the North side of the river one of those lines—on any of those lines between mile circles the miles being exactly straight on the same course if the commissioners run around the top of the mountain and if the top of the mountain wasn't straight, it would be longer than a mile, wouldn't it?

A. I think I explained a while ago in my deposition how the commissioners run the line.

Q. 349. Answer this question and explain it again?

A. Those straight miles are shown on the map, a number of them, or some of them at least, that I have made some tests upon the meanders of the mountain is not platted straight on the map.

Q. 350. They did plat them straight on the same course and yet they run it longer than a mile. Is that what you mean?

510 A. When the commissioners made that survey land was very cheap and they did it in a hurry, the report shows that from the time they made their report and handed in their report they couldn't have run out all those courses and little distances that are in that mountainous country to-day and make as complete a survey as the engineers of to-day. They had to bridge that it occurs to me, and it occurs to me or to any engineer of an intelligent mind that they must have cited the most prominent peaks around there, but the average general bearing is about straight, and they would take a bearing from one high point to another high point and send their chainmen around the mountain to make the measurements, and they took their bearings from the high points. That is the way I understand they did their work. Now in following the top of the ridge where the ridge is practically of uniform heighth and not so very crooked they would get approximately a very good survey of that section.

Q. 351. Now the top of that mountain all the way that you surveyed it along is tortuous and crooked?

A. In places it is and in places it is perfectly straight.

Q. 352. Now suppose one of the mile circles, which I mark "A" on this piece of paper from there to a prominent point, is as you determine a straight course, which I mark "B," and the top of that mountain runs around a tortuous course, such as I have indicated, thus:

it stands to reason that the line "A," "C," "D," "B" is longer than the straight line "A" "B" between these two high points, doesn't it?

A. Yes sir.

Q. 353. Now these commissioners' bearings, as you call them, North of the river which you say was surprisingly close to your

running of the line, you don't allow anything for the variation over there, did you at all?

A. Didn't allow anything at all for the variation.

Q. 354. You say you didn't allow anything for the variation?

A. No sir. You see it is a point of fact in that country
511 that there is only three possible ways that they could have run the Tennessee line—at the point where it is not disputed they could have crossed Slick Rock and run up Big Fodder Stack, or gone up Little Fodder Stack, or have gone over Hangover. In other words, there is three possible routes—the Big Fodder Stack, the Little Fodder Stack or the Hangover.

Q. 355. What is the variation in 90 years?

A. The variation in 90 years, as I explained to you a while ago, it is impossible to get it unless 90 years ago in that country they had determined the exact declination of the needle at that time and this time.

Q. 356. So you arrived at your conclusion that the course of the commissioners on this map and as you run it was surprisingly close without allowing any variation—you didn't allow any variation in that, did you?

A. If you had allowed any variation it would still be surprisingly close.

Q. 357. But you didn't?

A. No sir.

Q. 358. And didn't make any variation in regard to the line just North of the river and just South of the river?

A. No sir, I didn't take into consideration the variations.

Q. 359. Now when you began to run that ridge, called State Ridge and found yourself off the bearing of the commissioners' map, as you read the bearing or calculated it, you accounted for that deficiency or rather discrepancy by the variation of the needle, didn't you?

A. Well as I stated a while ago there would be some variation in the needle.

Q. 360. Well didn't you?

A. I don't think I said anything about variation.

Q. 361. I read from your examination in chief, page 305, as furnished the State of Tennessee as follows:

"Q. Taking the course from County Corners to Jenks' Knob according to the State Line report of 1821, which would it more nearly correspond with; the line along State Ridge and up Jenks' Ridge, or the line as claimed by Tennessee, going around the head
512 of Tellico river, Cold Spring Gap, etc.?"

"A. From the best comparison we can get from the original plat of 1821, we can get it very close by having located the 86th mile tree. The course given on the large map from County Corners to Jenks' Knob is, South 50 degrees West, while on the Commissioners' plat of 1821, it is South 54 degrees 45 minutes West, a difference of only 4-45 minutes, which would be a natural variation. I mean by that, the line run by the magnetic compass in 1821, that the variation in the magnetic needle would make the difference."

Is that answer correct?

A. That answer is correct.

Q. 362. So you did allow for a variation down there—that is right, isn't it?

A. No sir. Those bearings that I gave were just comparisons between my survey and their survey.

Q. 363. So you did try to compare the bearings by the variations in the magnetic needle?

A. The variation in the magnetic needle from that time to this I don't think could be over 5 degrees. As I stated a while ago, it is impossible to account for it correctly. The only way that it could be checked would be by a true meridian established at that day and time with a true meridian established at this day and time, but where the variation doesn't vary much and is close enough to make you follow the old marketl line and when you can follow the old marked lines and the bearings are close enough to lead you to follow them the variations one way or the other don't cut any figure at all.

Q. 364. So you do account for the difference in the bearings by the natural variation of the needle?

A. I accounted for the difference in my bearings and the bearings in 1821 and it gives me a difference of something like four or five degrees.

Q. 365. And you accounted for that difference by a variation in the needle?

A. It would only be a natural variation. If the variation
513 had been the other way it would have been close enough to find the old marked line, the original course it was run on.

Q. 366. Are you through with your argument?

A. I am not trying to argue—just trying to answer your question.

Q. 367. Mr. Burns, suppose this line which crosses the Hiawassee river, as shown on the commissioners' map, runs to the Georgia line a due South course and it shows a variation of some 7 or 8 degrees off of the South line, as marked on that map, what does it indicate?

A. If in that course they run a straight course and marked the timber along and if they marked the line straight originally following the magnetic needle I would have a better chance to determine the magnetic variation than any other line in it.

Q. 368. Now without regard to what they did on the ground—if this line which is marked on the map which is called for as a due South line is 7 or 8 degrees off of the South line as shown by this star at the other end of the map, there is a lot of errors somewhere along that line, isn't there?

A. Of course that is a question I can't answer. I don't know what method they used in plotting that line and how they put their North point on. Of course if they call for a due South line, it is natural to suppose that they would plot the line to call for a due South line.

Q. 369. You took your comparisons of these lines from the courses shown on this map as compared with this star up here showing the general bearing of these North and South lines?

MAPS

TOO

LARGE

FOR

FILMING

A. Yes sir, that is the only thing that can be done.

Q. 370. Then if this line down at the end of the map crossing Hiawassee river and the creek is off of a due South line when compared with the North and South direction as given on the map, there must be an accumulation of errors on that map somewhere, isn't that so?

A. The way I plot now every course that I plot now is according to the meridian. They may have put their meridian on after they got it plotted after they got it on the sheet.

514 Q. 371. If in running these several courses all the way from the beginning point until they strike the Hiawassee river and then at that place from their courses back there they plot down there on the map which is off a due South line some 7 or 8 degrees, it shows an accumulation of errors along that line?

A. Not necessarily.

Q. 372. Does it show that?

A. I don't know whether it will or not. As I stated a while ago it ought to have shown it on the map, but I don't know what their plotting was. It would not necessarily show an accumulation of errors up to that point. It might be right at a particular point.

Q. 373. I show you here a map which was taken by the Clerk of the Court of Appeals from the record in the case of Hebard v. Belding now pending before the Circuit Court of Appeals at Cincinnati, and ask you if it is not a copy of your map which was made Exhibit "B" to your deposition in that case?

A. I think it is, only it was reduced.

(Here follows map marked Exhibit X to Cross-examination of D. B. Burns, Nov. 30, 1911.)

Q. 374. You mean this is reduced in scale?

A. Yes sir.

Q. 375. File it as Exhibit "X" to your deposition?

A. All right.

Q. 376. Now you and your partner, Libby, made that map, didn't you?

A. Yes sir. Libby did the actual work pen work on the map, I prepared the notes for him.

Q. 377. And Exhibit "A" to your deposition in that bill of review case was a copy of the commissioners' map of 1821, wasn't it?

A. That is my recollection—a tracing of it.

Q. 378. Now if you find any reason to change that answer hereafter you may do so. However you can easily verify it by this record.

A. That is my recollection.

Q. 379. Didn't you and Libby testify in that case that it would be impossible for you or any other surveyor to take the dis-

515 tances and degrees as indicated on the commissioners' map of 1821 and correctly locate the State Line?

A. No sir, I don't think I said that. I said that it was impossible to get the exact degrees and the exact angles off of the plat

from which it was originally made, and I think I said further on down in that testimony that you can get the degrees and angles off the map sufficiently close to get the marked line.

Q. 380. Didn't you and he testify in substance that it would be impossible for any civil engineer or surveyor to take that map and locate the State Line according to the North point located on that map and fit it to any ridge on that map to-day?

A. Libby stated that.

Q. 381. And you and he were engaged in making that same map Exhibit "X" to your deposition, and did your work with the commissioners' map before you?

A. We considered ourselves as partners at that time, but that State Line work was given to me and it was directly under my charge.

Q. 382. I call your attention to Libby's examination in that case, a witness on behalf of Hopkins, page 116 of the printed record, and I will ask you if this question wasn't put to him:

"X Q. 18. To take the line as indicated on Exhibit "A" to Mr. Burns' deposition, it would be impossible for you or any other surveyor to take the distances and degrees as indicated on the map and correctly locate that line, would it not?"

"A. It would be impossible for any civil engineer or surveyor to take that map and locate it according to the North point there and fit it on any ridge that is in that country today." You heard Libby make that statement, didn't you?

Mr. SONDLEY: The State of North Carolina objects to this method of introducing as upon a cross-examination into this case the declaration of another man whom the State of Tennessee has not introduced as a witness in the case now on trial and whom it could introduce if it desired to do so but not in such manner as to let the State of Tennessee pick out such statements of that
516 other man without giving the State of North Carolina the benefit of his full statements.

Q. 383. You heard Libby make that statement, and you didn't contradict it?

A. Yes sir, I was on the stand before Libby was on the stand.

Mr. SONDLEY: The State of North Carolina objects to this method of introducing as upon a cross-examination into this case the declaration of another man whom the State of Tennessee has not introduced as a witness in the case now on trial and whom it could introduce if it desired to do so but not in such manner as to let the State of Tennessee pick out such statements of that other man without giving the State of North Carolina the benefit of his full statements.

Q. 384. You heard him testify and you didn't attempt to correct it, knowing it to be untrue?

A. I will tell you just how that was. I talked to Mr. Libby about that map fitting the ridges in that country and before he went on the stand, and Mr. Libby is a rather high tempered man and if he

gets an idea in his head he is rather determined and he had mixed it—I won't say that either—but this original map of 1821 being on such a small scale, of course it was impossible to get the exact degrees and the exact angles—that is from which the map was originally made, and Mr. Libby having that in his head that was the way in which he answered that question—that it was impossible to get the same degrees and angles and reproduce from what it was originally made, and after he went on the stand and after he came off of the stand he was of the opinion that he was wrong, and the next day I think he went on the stand and corrected it.

Gen. CATES: The State of Tennessee objects to what Libby said after he came off of the stand and told this witness.

Q. 385. Now when you were giving that explanation you were looking at the bottom of page 116 and the top of 117, pointed out to you by Mr. Hopkins?

A. No sir.

Q. 386. Mr. Burns, you mean to tell me when you were
517 giving that explanation you were not looking at Mr. Libby's answer to question No. 1 on Re-Direct Examination by Mr. McQueen?

A. I read this a while before, but as to making the explanation, I made the explanation as I remembered it. I talked to Mr. Libby three or four hours before he went on the stand.

Q. 387. And tried to get him from saying that?

A. To get him to see it in the proper light.

Q. 388. I will get down to Mr. Libby's examination X Q. 19 as follows:

"It is also impossible to take that map and fit it on Slick Rock Creek, or fit the bed and meanders of Slick Rock Creek, isn't it?"

And Mr. Libby's answer:

"A. I don't understand your question; let me have it again, please".

And X Q. 20:

"It is also impossible to take the map Exhibit "A" and follow its calls and make it fit the meanders of Slick Rock Creek, as shown by red line on Exhibit "B" is it not"?

"A. I would like to answer that direct, but as a matter of fact, it don't show any meanders on this".

X Q. 21. Read the question please."

"A. Yes sir."

Now he testified to that, didn't he?

A. Yes sir.

Mr. SONDLEY: The State of North Carolina objects to this method of introducing as upon a cross-examination into this case the declaration of another man whom the State of Tennessee has not introduced as a witness in the case now on trial and whom it could introduce if it desired to do so but not in such manner as to let the State of Tennessee pick out such statements of that other man

without giving the State of North Carolina the benefit of his full statements.

Q. 389. Now that red line on Exhibit "B" to which reference is made in Cross-Question 20 there is your running of the line South of the river, isn't it?

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Mr. SONDLEY: The State of North Carolina objects to this method of introducing as upon a cross-examination into this case the declaration of another man whom the State of Tennessee has not introduced as a witness in the case now on trial and whom it could introduce if it desired to do so but not in such manner as to let the State of Tennessee pick out such statements of that other man without giving the State of North Carolina the benefit of his full statements.

A. That is my understanding of it.

Q. 390. As shown on this Exhibit "X" to your deposition, from the mouth of Slick Rock Creek up to Fodder Stack?

A. That is right.

Mr. SONDLEY: The State of North Carolina objects to this method of introducing as upon a cross-examination into this case the declaration of another man whom the State of Tennessee has not introduced as a witness in the case now on trial and whom it could introduce if it desired to do so but not in such manner as to let the State of Tennessee pick out such statements of that other man without giving the State of North Carolina the benefit of his full statements.

Q. 391. Now then to show about his explanation—I read immediately following at the bottom of page 116 and at the top of page 117 of his re-direct examination, which you read a while ago.

A. I didn't read it. I beg your pardon.

Q. 392. Now I read from his re-direct examination question 1: "Now, why is it impossible to make that map fit the meanders of the creek, as stated by you?"

"A. This map was made on a scale about 13,000 feet to the inch—Exhibit B2—is made on a scale about 13,000 feet or 800 poles to the inch, and they can not show the meanders of the creek as they really are; and I think we are justified in saying that they connected the main bends and only showed long meanders, when, in fact, there are numerous short ones."

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"R. D. 2. I will ask you whether or not the creek is properly located on the map of 1821?"

"A. The creeks and rivers are probably sketched in, inasmuch as they show the Tennessee River being about half a mile wide, when as a matter of fact it is only about 300 feet."

"R. D. 3. It is sketched in?

"A. It is sketched in after the line was platted."

That is there, isn't it?

A. Yes sir.

Q. 393. Didn't you look at that testimony at the direction of Mr. Hopkins when you were giving your explanation a while ago.

A. I looked at this one question re-direct No. 1 and the answer thereto.

Q. 394. As a fact you testified that these streams were only sketched in your deposition?

A. Yes sir, and I think so yet.

Q. 395. Now you say you surveyed this Tennessee River from the State Line up some 28 miles, didn't you?

A. Yes sir, about that, to the mouth of Panther Creek. That is pretty close to the county line, close near Bushnell.

Q. 396. Is that survey correctly shown on this map?

A. Yes sir, that is correctly shown.

Q. 397. Now how does your survey compare with the Tennessee River as put down on this commissioners' map—shows that the commissioners' map is all wrong down the Tennessee River, don't it?

A. It proves to my mind that the Tennessee River was merely sketched on the original map of 1821.

Q. 398. And this sketching of the Tennessee River East of the State Line on the commissioners' map of 1821 don't show its true location at all, does it?

A. I don't think so, approximately it shows the crossing—where they crossed it—correctly. The rest of it is just sketched in
520 from the knowledge of the country and from what they could see from the high peaks.

Q. 399. How wide is that Tennessee River, where it crosses, as shown on this commissioners' map of 1821? Take the pliers and show me accurately and see if it don't show it to be about 3,200 feet wide?

A. Yes sir, about a half a mile wide.

Q. 400. How wide is that? (Indicating a point on the map)?

A. From 300 to 325 feet.

Q. 401. Now you referred a while ago to the short time that the commissioners — taken on this—from the time that they began until they fixed up their report and map. Do you know where they began?

A. No sir.

Q. 402. You know where they fixed up their map?

A. At Knoxville.

Q. 403. In what month—September, 1821?

A. It was in my testimony taken at Asheville.

Q. 404. Now Mr. Burns, in your original examination you stated that to your satisfaction that this commissioners' map of 1821 showed just where Fodder Stack mountain is, didn't you?

A. Well I think I testified that that first decided break — in the general direction of the line about 6 or 7 miles after you crossed the Tennessee River running Southwest. The break that we got at that point was Big Fodder Stack.

Q. 405. Now I lay before you a copy of the commissioners' map of 1821, Exhibit "A" to Onley Williams' deposition, and ask you to indicate by a star or other character satisfactory to yourself and your

initials the point on that map where you say Big Fodder Stack mountain is?

A. You mean the peak itself?

Q. 406. Yes sir.

A. That scale is so small that you can hardly make a cross. Right there (Indicating on the map).

Q. 407. Make it so we can know it again?

A. I do so as requested, marking it a cross and placing by it my initials "D. B. B."

521 Q. 408. For further identification, I will ask you to write just near that cross made by you the word- "Fodder Stack"?

A. I have done so as requested.

Q. 409. Now indicate in the same way where you say the "Junction" is by making a star and writing "Junction"?

A. I have done so, making a star and printing in red ink "Junction." The mile circle opposite the star is my idea of the Junction.

Q. 410. Now Mr. Burns locate "Stratton Bald" on that map?

A. I can't do it. Stratton Bald would be about in there.

Q. 411. Mark it in ink.

A. The Junction is really at one end of Stratton Bald.

Q. 412. Mark something there to indicate Stratton Bald?

A. Approximately there—about there would be about the highest point.

Q. 413. Mark it "Stratton Bald"?

A. Now I have marked Stratton Bald by a circle and printed the words "Stratton Bald" near to it.

Q. 414. Now then Mr. Burns locate "Hangover" on there for me?

A. Well that would be a matter of pretty near guess work—would take more tools than I have got to do it with or to put it on there accurately.

Q. 415. You have got a meridian located here on the commissioners' map of 1821 drawn from your own map, haven't you?

A. I can't half see—the light is so dim that I can't see.

Q. 416. So that there may be no doubt about it, I will ask you to please write your initials in red ink near "Junction" and "Stratton Bald" as you did near "Fodder Stack," to show that those words were placed on there by yourself?

A. (The witness writing his initials "D. B. B." in red ink on the map as requested)

November 30, 1910, at 4:30 P. M. the further cross-examination of the witness D. B. Burns was adjourned till 9:30 A. M. December 1, 1910, at the same place.

522 December 1, 1910, at 9:30 A. M., the further cross-examination of the witness D. B. Burns was resumed pursuant to adjournment.

Present:

(For North Carolina:) General Theo. F. Davidson, Ben Posey, Esq., F. A. Sondley, Esq.

(For Tennessee:) Charles T. Cates, Jr., Attorney General of Tennessee, T. E. H. McCroskey, Esq.

D. B. BURNS, resuming the stand for further cross-examination, deposed as follows:

Cross-examination continued by Gen. CHARLES T. CATES, JR., on behalf of the State of Tennessee:

Q. 417. Yesterday afternoon my last question to you was a request to locate "Hangover" on this copy of the map of 1821, Exhibit "A" to Onley Williams' deposition and you stated, as I understood it, that the light in the room was too bad to permit you to do it at that time. I will ask you to please do that now.

A. All right. How do you want that marked—in red ink?

Q. 418. Yes sir.

A. By a star?

Q. 419. Yes sir—one is a cross mark, the other is a star, and the other is a circle—put any character down there—anything that will indicate that particular point—put Hangover there by D. B. B.

A. Now I have indicated the point, marked it with a small circle in red ink and printed near it the word "Hangover" "by D. B. B."

Q. 420. Now Mr. Burns, yesterday evening when I asked
523 you that question, didn't you start to locate Hangover down on the thick heavy shading contained on this map a little bit Northeast of the point which you *designed* "Stratton Bald" and between that and the mouth of this stream which is marked a creek?

A. No sir. I didn't make any pretensions to locate it yesterday evening. I think I stated that I couldn't put it on without some instruments.

Q. 421. Didn't you take your pen and start to put it down on this heavy shading when you were cautioned by Mr. Hopkins to be careful?

A. I didn't pretend to put it down there because I couldn't see.

Q. 422. Didn't that thing happen yesterday evening when you started to locate it on this heavy dark shading and Mr. Hopkins standing at your left hand cautioned you to be careful??

A. Never made any attempts to locate Hangover yesterday evening.

Q. 423. Didn't Mr. Hopkins caution you to be careful when you picked up the pen and started to answer the question that I asked you?

A. No sir. I stated I would put on Hangover when I had some tools and better light.

Q. 424. You had a copy of that map before you last night?

A. Yes, sir.

Q. 425. The one that is exhibited with your deposition?

A. Speaking about the map of 1821?

Q. 426. The same one that was before you last night and before you this morning?

A. You mean the same map that was before me last night as is before me this morning?

Q. 427. I mean last night after adjournment?

A. I didn't have any copy of the map after adjournment last night.

Q. 428. Now then Mr. Burns, I will ask you to state if according to this map of 1821 and the way you have located Stratton Bald and Hangover on it, that this stream marked a "creek."—if it is Slick Rock Creek—is shown to break right through the Hangover lead or mountain, doesn't it?

A. The Hangover lead or mountain, or the Hangover itself and the mountain leading around to the Junction is not shown on that map at all.

524 Q. 429. Well you have properly located Hangover on this map of 1821 by courses and distances assuming that the junction point is where you have located it?

A. Yes sir.

Q. 430. Then if that be true, this map of 1821 shows that stream there to break through the Hangover mountain leading down to the river, doesn't it?

A. The Hangover mountain is not shown on the plat, but if the stream——

Q. 431. (Interrupting.) Wait a minute. Please mark on this map of 1821 the point from Hangover, as you have designated it, to where the Hangover mountain would strike the Little Tennessee River?

A. I don't believe I quite understand the question. I will tell you what the Hangover mountain is as I understand it.

Q. 432. You can argue with me later on.

A. Please state it again.

Q. 432½. Please indicate on this map of 1821 where the Hangover mountain, as it is actually on the ground, ought to strike the Little Tennessee River?

A. I will attempt to answer the question. I would like for you to explain the question before answering the question.

Mr. SONDLEY: The State of North Carolina objects to the witness answering the question when he asks for an explanation of the question.

A. I will ask you if you mean the Hangover mountain clear to the Tennessee River, or taking the Hangover mountain from the Junction following it on down to the Tennessee River?

Q. 433. I want you to locate the Hangover ridge or mountain or lead or whatever you call it, running according to the places that you have designated on your map, from the main Hangover peak, which you have located by this circle in red ink on the map of 1821,

down by Grassy Gap, Buckeye Gap, Big Flat Gap, Cold Spring Knob on to a point at the Tennessee River opposite the fore and aft spruce pine on the North bank of the river. Now locate that line on this map of 1821?

A. I could only do that approximately, but I don't under-
525 stand that to be the main Hangover mountain which comes from Stratton Bald and strikes the Tennessee River.

Q. 434. I didn't ask you for the main mountain. I asked you to locate the line from Hangover peak down by way of Grassy Gap, Buckeye Gap, Big Flat Gap, and Cold Spring Knob as you have shown it on your map, complainant's Exhibit "D" to the point on the Tennessee river opposite the fore and aft hemlock tree—the marked fore and aft hemlock tree. That is the line I am asking you to mark on this map of 1821 from the point where you have designated the Hangover peak?

A. Well do you want it put on as closely as I can? I can consume a great deal of time and put it on more accurately or I can put it on not so accurately in less time.

Q. 435. Put it on there so you are willing to swear to it on this map of 1821—its general or approximate bearing.

A. You can't require, or I can't possibly put on a map made so long ago and on a scale so small when the work was done in a hurried manner and not put on a more accurate scale. You can't put it on accurately. I can't put it on so that I can swear it is accurate, but I can put it on a very close approximation.

Q. 436. Well then put it on a very close approximation.

A. I have done so in dotted red line along which appears my initials.

Q. 437. Please make a little circle in red where that line crosses the stream marked "creek"?

A. I do so.

Q. 438. Now make another circle at the end of that dotted line leading down from Hangover where it reaches the river?

A. I do so as requested.

Q. 439. Now Mr. Burns make that line in red ink from the point which you have indicated as Stratton Bald to Hangover?

A. I do so approximately.

Q. 440. Now Mr. Burns, as shown on this map of 1821, that line of leads or ridges, or that lead or ridge, running down from Hangover at the point you have indicated it on the map to the Little Tennessee River does cross that thing on the map, which is
526 designated as a creek, doesn't it?

A. Yes sir, according to the way the creek is put on the map it crosses it.

Q. 441. Now assuming that this thing which is laid down on the map of 1821 as a stream and designated a "creek" and which flows into the Tennessee River somewhere down there where the line appears to cross the Little Tennessee River to be Slick Rock Creek, the greater portion of that stream, as shown on that map, lies to the East of that ridge leading from Hangover down to the river as you have designated it on this map of 21—1821, doesn't it?

A. As it appears on the map that is true.

Q. 422. And the headwaters of that stream as shown on that map are some three or four miles Southeast of Hangover, are they not?

A. Yes sir, that is the way it appears on the map.

Q. 443. Now whereabouts on this dotted line which you have marked leading from Hangover down to the river is the Cold Spring Knob?

A. Right where those pencil lines cross is Cold Spring Knob.

Q. 444. Put a circle in red there and mark it "C. S. K."?

A. I have done so; that is, I have made a circle and placed Southeast of it the letters "C. S. K."

Q. 445. Now Mr. Burns, do I understand you to say that you know where the West fork of the Tellico River is?

A. I don't think I said I knew where it was, I know about where it is. I have never sketched in around that country—never been in that country.

Q. 446. Now going back, for a moment, to this stream marked a "creek" entering the Little Tennessee River just above where the State Line seems to cross it on this map of 1821, Exhibit "A" to Williams' deposition—how wide does that stream seem to be down there at its mouth, according to this map of 1821?

A. Nearly 800 feet as near as I can determine from the scale.

Q. 447. How wide is Slick Rock Creek at that place?

A. Well I just forget, something like between 20 and 30 feet I would say.

Q. 448. Now how wide is that stream marked a "creek"
527 up there where it makes an elbow or turn going up it toward the Southeast—about a mile and a quarter from the creek?

A. Something like 600 feet as near as I can get at it.

Q. 449. Now Mr. Burns coming to the big map prepared by you, complainant's Exhibit "D." I believe you have stated that you haven't shown on it where 20 Mile Creek runs into the Little Tennessee River?

A. No sir.

Q. 450. Why didn't you show that stream in connection with this territory with your survey of this territory?

A. 20 Mile Creek must be—I don't know the distance—must be from 6 to 10 miles from the State Line. Didn't deem it necessary to show a stream that far away from the country. I had no survey of 20 Mile Creek; I simply got the falls where it came into the Tennessee River.

Q. 451. You noted on your survey the Tennessee River 20 miles above where it crosses or cuts through the mountain, the point at which the creek flowed into the river?

A. That is my recollection. I noted the mouth of it where it comes into the Tennessee River.

Q. 452. Have you a memorandum with you that shows that?

A. I believe the book that has got that in it is with my brother out in the field. I will look and see if it is here. No sir I don't have that book, I am sorry.

Q. 453. How far does 20 Mile Creek run in above the mouth of Cheoah?

A. That would only be a guess—my recollection is about 5 miles—may be a little more, may be a little less.

Q. 454. Now on page 289 of the copy of the testimony furnished to Tennessee in this case, I see you make a reference to Mitchell Lick Gap, and I see those words on your map, Exhibit "D" to your deposition, in between the line which you have marked State Ridge and the line further East marked "County Line." In which of these lines is Mitchell Lick Gap?

A. Mitchell Lick Gap is in the dotted line marked "County Line" and in line with the words Lick Gap.

Q. 455. So that part of the line is around the territory in
528 dispute, that is, East of the territory in dispute?

A. Yes sir.

Q. 456. You didn't find any State Line marks on this State Ridge, did you?

A. Yes sir, I found a number of trees that had the same appearance of marks that I found all the way through.

Q. 457. Did you block any of them?

A. I attempted to block one of them and after I got into the tree I found it was hollow and it was decayed on the inside and I couldn't get far enough to get the hacks.

Q. 458. So you didn't prove by blocking any of those trees which bore State Line marks that they carried the marks back to 1821?

A. I didn't block any. I tied in a number that had been blocked, some 7 or 8 I suppose, that Mr. Jap Fain pointed out to me, but personally I didn't block any trees except the tree that I spoke of that I couldn't get any hacks on the inside that the hack went into the wood.

Q. 459. So you didn't find a tree along there that the hack didn't seem to go into the wood? Is that your reason for not blocking them?

A. One or two that went to the wood, but they were hollow through.

Q. 460. Did you cut into them?

A. No sir, I could see that they were hollow.

Q. 461. I read from your examination in chief relative to a sourwood tree found on that Hangover ridge leading down the river and which had been blocked. I believe I am right in saying that you found it had been blocked?

A. Yes sir.

Q. 462. Now I read the latter part of one of your answers in relation to that tree, as follows: "In my judgment, and opinion, as a surveyor, I think, in fact I know, that it never had any State Line marks on it." Now Mr. Burns if the block had carried the State Line marks, how can you say that it never had any State Line marks on it?

A. All the State Line marks that I was able to find on the entire line that I had surveyed bore considerable similarity, that is, a

State Line side line tree was marked with three hacks and
529 they were generally spaced about the same distance apart, one directly over the other or nearly so, and a fore and aft tree was marked with a blaze and two hacks with the same regularity and marked in the direction in which the line approached and in which the line left. I didn't see any marks on this sourwood. All the marks I saw on it did not resemble State Line marks.

Q. 463. If the marks were in the other block taken out, then the marks were not apparent to you, were they?

A. Certainly not. I didn't see what was in the block that was taken out of course.

Q. 464. Then how can you say that it never had any State Line marks on it?

A. My recollection is that the block was taken out at a point where it would indicate that it wasn't a fore and aft tree, but I never saw anything on the other side of the tree to show that it was marked as a fore and aft tree, and drawing my conclusions the way the block was taken out it had never had any State Line mark on it.

Q. 465. So you don't know what marks it had on it as a State Line tree?

A. No sir.

Q. 466. You didn't see the block?

A. No sir, only where it was taken out of the tree.

Q. 467. So you are putting it very strong when you say that it had never had any State Line marks on it?

A. I am giving my opinion.

Q. 468. Let me again call your attention to the latter part of one of your answers in regard to that tree: "In my judgment, and opinion, as a surveyer, I think, in fact I know, that it never had any State Line marks on it." Did you not there make the positive statement that it never had any State Line marks on it?

A. I answered it right positive I will admit, possibly I made it rather more positive than I should have answered. I still believe it with all my heart.

Q. 469. Do you believe it with your heart or your mind?

530 A. I believe it at any rate.

Q. 470. Now I notice that in your examination in chief in relation to the line running from Hangover and Hayoe around to Stratton Bald you made answer in part as follows: "From Hayoe around to Stratton Bald the timber is scrubby, but there are several trees that were old enough to show State Line marks. There is some timber that shows line marks made in 1850." Now I will ask you to state if the words "were old enough" were written into this copy between the word "that" and "show" by you?

A. Well I had a copy of it to correct and the stenographer made some errors in a great many places and I made some corrections in it and I don't know whether that is the copy I had or not.

Q. 471. Can't you tell whether those three words "were old enough" are in your handwriting?

A. I believe I wrote it, but I am not positive, I can't say for sure.

Q. 472. So that the answer, as it was originally written down by

the typewriter read: "From Hayoe around to Stratton Bald the timber is scrubby, but there are several trees that show State Line marks. There is some timber that shows line marks made in 1850." So that as it was originally written down, the words "were old enough" were not in there?

A. No, sir, I made the correction—I put the words "were old enough" in there, I don't know whether that is the copy I had or whether some other man wrote that in that copy.

Q. 473. There is some difference between a line which shows State line marks and "several trees that were old enough to show State Line marks"?

A. I put in there the trees "were old enough" to show State Line marks"?

Q. 474. There is quite a difference between trees "that show State Line marks" and "trees that were old enough to show State Line marks."

A. That is the reason I made the correction, because I didn't state that State Line marks were there.

Q. 475. Now did you block any of these marks which you say were made in 1850?

A. The marks that I referred to that were made in 1850 were land corners to the Belding land, were made by Sam Tickley over on Slick Rock. There were well defined lines leading up to
531 them and I didn't block them.

Q. 476. You were asked about State Line marks and you said "there is some timber that shows line marks made in 1850." Wasn't you referring to State Line marks made in 1850?

A. Referring to land corners.

Q. 477. Didn't you block any of those land corners?

A. Not necessary to block those because I was following the old lines up to them and I knew there couldn't be no mistake about them being the proper corners, and those corners were not marked right for State Line trees—had the hacks marked on them the way the line comes up and the way the line leaves—marked with three hacks. If they had been State Line marks they would have been marked with three hacks on each side or with a blaze and two hacks, but they were not marked that way.

Q. 478. How many degrees in a right angle?

A. Ninety.

Q. 479. Mr. Burns, did you take the elevation of "Stratton Bald"?

A. No sir, I didn't take any elevations, only the line that I run across Stratton Bald and Hangover. I could figure out approximately the relative location—I mean the relative elevation of it. I didn't carry no set of elevations, I didn't work them up.

Q. 480. Now I asked you yesterday about the elevations along Stratton Bald and Hangover lead down to the river, but I didn't have your map, Exhibit "D" before us. Now I am going to ask you to place on your map, Exhibit "D", the evelation of Stratton Bald taken from the "Nantahala Quadrangle Sheet" exhibited with the depostition of Gannett?

A. How do you want me to put it on?

Q. 481. In red ink?

A. I am perfectly willing to put it on, but I would like to put them on decent and I am not fixed here to do it. The lettering on that map is pretty fair and I hate to spoil it by scribbling over it.

Q. 482. All right, put it on there if you object to putting it on your map Exhibit "D," which is filed as a part of the record in this case?

A. Of course I don't object to it.

532 Q. 483. We will now take off (the desk) this Exhibit "D" which is a part of the original record, and I will ask you to put those elevations on a copy of Exhibit "D", a blue print which is here before you?

(Here follows map marked Exhibit D, Burns' X Exam., page 532*a*.)

A. Of course these contours on the government map only show elevations by the 100 feet and therefore I could only put it down in 100's. Elev. 5400 and I designate it on the map "Elev. 5400" as the elevation of Stratton Bald as shown by the government topographical map.

Q. 484. Now place at the point you have designated as "Hayoe" the elevation shown by this government map?

A. I do so. It is 5200 approximately from the government map. Really 5200—(plus).

Q. 485. Now do the same thing in regard to Hangover?

A. It would be 5100—(plus). I do so. It is from the government map approximately 5100—(plus). Put a plus after all of those elevations.

Q. 486. Now do the same thing for the elevation at Grassy Gap. That (indicating on the map) is the place you have designated on your map as Grassy Gap, or can you make that out on the government map—you mean you can't detect it sufficiently well to take the elevation from that map?

A. No sir.

Q. 487. How about Cold Spring Knob as it appears there on the government map?

A. I can get an elevation for that.

Q. 488. What is that?

A. 3500—(plus).

Q. 489. Please so indicate it on this copy of your map?

A. I have so marked it, an elevation of 3500—(plus).

Q. 490. Now at the place that is marked Slick Rock Gap on your map, what is the elevation as shown from this government map?

A. 1600—(plus), and I so indicate it on the map.

Q. 491. Now what is the elevation of the point which you designate on your map as Sourwood Gap as it appears from this government map?

A. As near as I can get it is 1700—(plus), and have so marked it.

Q. 492. Now there is a place on that ridge between Sour-
533 wood Gap and the Little Tennessee River at the point where Tennessee claims the line crosses and on yesterday you said the contour lines indicated 1900 feet about?

A. Yes sir.

Q. 493. Please designate that point on this map of yours—copy of Exhibit No. 4?

A. I mark in an elevation of 1900—(plus) followed by an arrow directed to a point on the line.

Q. 494. Now mark in the elevation of the river approximately as shown from this government map?

A. I have done so, the elevation being 100—(plus).

Q. 495. Now how far is that point where you have designated the elevation—an elevation of 1900—(plus)—from the river?

A. That is 1750 feet—a little over a quarter of a mile.

Q. 496. A little over a quarter of a mile Southwest of the river?

A. Yes sir.

Q. 497. Now Mr. Burns, mark on this copy of your Exhibit "D"

the elevation of Big Fodder Stack from this government map "Murphy Sheet"?

A. The elevation is 4300—(plus).

Q. 498. Now mark the elevations of the point where your line makes a curve and then a sharp turn to the South from the government map "Murphy Sheet", which you say is about a quarter of a mile below?

A. The government sheet doesn't show that sufficiently.

Q. 499. Well mark the elevation of the point which you have designated on your map as Rocks Stack from this government map "Murphy Sheet"?

A. I can give an elevation for that—4445.

Q. 500. Now mark the elevation from the government map from the point which you indicate on that line running from the Junction as Chestnut Knob?

A. That is 4400—(plus).

Q. 501. Now what is the elevation of the point which you have indicated on your map as "Junction"? That is, as shown by the government map?

A. 4900—(plus).

Q. 502. Now I see between Chestnut Knob and Junction
534 you have indicated a place called Cherry Log Gap. What is the elevation of that place as shown from the government map?

A. 4100—(plus).

Q. 503. Now I point out to you another point on your line from Fodder Stack to Junction which you have indicated as Glen Cove Gap. Give me the elevation of that point from the government map?

A. It is about the same, 4,100—(plus).

Q. 504. Now what is the elevation of Little Fodder Stack, as it appears on this government map?

A. Elevation 3,687, no plus after that.

Q. 505. What is the elevation of the place that you call Big Stack Gap as shown from that government map?

A. I don't believe the government sheet shows that.

Q. 506. Well what does the government sheet show?

A. The first gap they show is entirely too far from Big Fodder Stack Gap to be that map. That gap shows 3,300—(plus). I suppose it was intended for that, I will mark it so.

Q. 507. That is the first gap North of Big Fodder Stack going to Little Fodder Stack?

A. Is 3,300—(plus).

Q. 508. How far is that from Big Fodder Stack as shown on your map, approximately?

A. About half a mile.

Q. 509. Now the elevation of the point on your map called Wild Cat Knob, as it appears on the government map?

A. I do so, it is 3,600—(plus).

Q. 510. Now almost due South from Big Stack Gap are Hayoe and Hangover, aren't they?

A. They are considerably Southeast. I should say about South 45 East.

Q. 511. Hangover towers above Big Stack Gap some 1,800 feet, doesn't it?

A. That is the way the government map shows it.

Q. 512. It towers above Big Fodder Stack 1,800 feet, doesn't it?

A. According to the government sheet?

Q. 513. Yes sir.

535 A. Yes sir.

Q. 514. Hayoe towers above Big Fodder Stack as shown by the government sheet, 900 feet, doesn't it?

A. Yes sir.

Q. 515. And Stratton Bald towers above Big Fodder Stack, as shown by the government map, 1,100 feet, doesn't it?

A. Yes sir.

Q. 516. Now what is the elevation as shown from the government map of the point on Slick Rock Creek where the line as run by you, appearing on Exhibit "D." leaves said creek and runs to Big Fodder Stack?

A. About 1,500 feet. Want that written on there?

Q. 517. Yes sir, if you please.

A. I have done so as requested.

Q. 518. Now when you are standing at that point and where you leave the creek to run to Big Fodder Stack, Cold Spring Knob is off there to your left 2,000 feet above you, as shown on the government map?

A. Yes sir.

Q. 519. And Hangover is up there still to the left 3,600 feet above you, is it not?

A. Yes sir.

Q. 520. Now what is the elevation of the river where Slick Rock Creek runs into it, according to the government map?

A. Well about 1,100—(plus) as near as you can get it from the government map.

Q. 521. You mean there is no fall in that half mile?

A. The government map does not show it, probably be 8 or 10 feet fall in that distance.

Q. 522. How far do I understand you to say from Little Tennessee River is the point where you left the creek and which you have indicated as having an elevation of 1,500 feet—about some 5 miles?

A. Five miles as given in my testimony.

Q. 523. Do you say that that creek has a drop of 400 feet in 5 miles to its mouth?

536 A. It is so shown by the government sheet. That is all I know about it. I never run any levels up there.

Q. 524. Now speaking about five miles—what trees here in a bunch on this creek do you say is marked as a 5 M. tree?

A. I never said any was marked as a 5 M. tree.

Q. 525. Did you see any tree along there that had 5 M. on it?

A. No sir.

Q. 526. Or N. C. 5 M.?

A. I don't think I ever saw such a tree, have no recollection of it now, I might have seen it.

Q. 527. Now Mr. Burns, I direct your attention to the North side of the river—now I will ask you to state if going from the point where you commenced at the 59th M. tree, and as indicated as a beginning point on your map, if according to Tennessee's contention to Hangover it isn't nearer than going from the 59th M. tree to Big Fodder Stack up Slick Rock Creek, according to North Carolina's present contention?

A. Well you asked me from the 59th M. tree. I can give you the figures as I have them upon the map. The portion of the line from the 59th M. tree, where the road crosses the Smoky Mountain, was run by Mr. Gannett, and I have never been over that portion of the line. I have a certified copy of his notes.

Q. 528. I will ask you to state then if from the place where the turnpike road crosses the line North of the river along the line of Tennesee's contention to Hangover isn't a shorter line than from that same road along North Carolina's present contention to the Big Fodder Stack Mountain?

A. I will give you the distances each way. It will take a few minutes to get it.

Q. 529. Can't you say whether this line is shorter than that one?

A. The distance where the turnpike road crosses the Smoky Mountain to the Hangover along the Tennessee contention is 8.53 miles. From the same point on the Smoky Mountain side along the North Carolina contention to the Big Fodder Stack is 10.27 miles.

Q. 530. Now I will ask you if it isn't a fact that taking
537 the point where that turnpike road crosses the State Line North of the mountain as a center and running a straight line to Hangover and using that straight line as a radius and drawing it Northwardly until it crosses the line run by you between Slick Rock and Big Fodder Stack mountain, doesn't it cross that line just North of the place where you have marked tree No. 54?

A. Yes sir.

Q. 531. So as a matter of fact from the turnpike North of the Tennessee River beyond, the measured distance and the distance to the eye to Hangover is shorter than the measured distance or the distance to the eye of Big Fodder Stack?

A. Well the measured distance. The distance by the eye you couldn't very well tell. The air line distance from the Smoky Mountain road to Hangover is shorter than from the Smoky Mountain road to the Big Fodder Stack.

Q. 532. I believe you say that coming from the Tellico country along the Northeast of this mountain ridge and its undisputed points, say from Laurel Top Northeasterly toward the Tennessee River, you say that when you would reach the point which you have marked Junction that you would turn off and follow the Big Fodder Stack ridge for the main ridge of the mountain?

A. I don't think I stated it that way. I stated that in coming

around in the direction that you mention after going to the Junction that the ridge leading to the Fodder Stack is off a thousand feet or so. That would be a quarter of a mile—is very indistinct—while the ridge leading over the Stratton Bald is more prominent.

Q. 533. But didn't you say in your previous examination that you followed that Fodder Stack ridge around there for the main ridge of the mountain?

A. If you get upon Stratton Bald where you could get a good view of the mountain I would take Big Fodder Stack mountain as the main mountain and the leading ridge.

Q. 534. Then if you would follow that as the leading mountain and the leading ridge you would follow its extensions down to Little Fodder Stack and then over Stiff Knee?

538 A. Yes sir.

Q. 535. And then to the river down towards Tellassee?

A. Not so far as Tellassee—I suppose the first big bend to the left of the river below Slick Rock Creek.

The further taking of the testimony of D. B. Burns was adjourned at 12:20 P. M. till 2:00 o'clock, when the same was resumed—all parties being present.

D. B. Burns, resuming the stand for further cross-examination, testified as follows:

Cross-examination continued by Gen. C. T. Cates, Jr., on behalf of the State of Tennessee:

Q. 536. Now Mr. Burns, going from County Corners out along the State Ridge, as you have marked it on this map Exhibit "D," isn't it a fact that one cannot go very far along that line before it is manifest that he is on a ridge much lower than McDaniel Bald, Hangover, Rocky Knob further to the East?

A. I would say about two miles, roughly.

Q. 537. You would say he would go two miles before he would discover that he was lower than that Eastern ridge around Tellico?

A. I mean by that answer that the ridge, the State Ridge, for two miles would be about the same elevation than by going around McDaniel Bald.

Q. 538. What is the average elevation of that ridge around McDaniel Bald and Rocky Knob?

A. I never worked it out. The ridges between the lower peaks are very much lower. The State Ridge keeps up an elevation for about two miles.

Q. 539. Then drops quickly to where the middle prong of Tellico cuts through it?

A. The descent is more rapidly as you pass further to it.

Q. 540. Now on this map, Exhibit "D," approaching the

539 river from the North side, I see that you seem to have run it down to the river about a half a mile above the mouth of Slick Rock and then your line comes down the river or seems to have

been run by you down the river to the mouth of Slick Rock. Is that correct?

A. That is correct.

Q. 541. Now isn't it a fact that you didn't find a single marked tree between the point where you reached the river here and the mouth of Slick Rock on the North bank?

A. At the time I made the survey two years ago I didn't find any trees along the Tennessee River that thoroughly satisfied me to be State Line marks.

Q. 542. Did you find any trees along there marked at all?

A. Yes sir.

Q. 543. Why didn't you block one of them to see how old it was?

A. It was an oversight I suppose.

Q. 544. Now on this map you have indicated tree No. 30?

A. Yes sir.

Q. 545. Did I understand you to say that you never went to the tree?

A. At the time I made the survey I didn't go to the tree.

Q. 546. Did you ever go to the tree?

A. The 26th of this month.

Q. 547. The 26th of November?

A. On the 26th of November this past Saturday.

Q. 548. It is blocked, isn't it?

A. Yes sir.

Q. 549. Why didn't you go to it when Gannett found it?

A. I wasn't with Gannett when he checked my line from the Junction to the Smoky Mountain. I was only with him from the 131st M. tree to Jenks Knob.

Q. 550. Where were you when he found this tree?

A. In Asheville.

Q. 551. Where were you when he told you about it?

A. In Asheville.

540 Q. 552. You don't know why Gannett didn't block it?

A. No sir.

Q. 553. Why didn't you never go and block that tree?

A. I did.

Q. 554. When?

A. Last Saturday.

Q. 555. And what did you find?

A. The original State Line marks.

Q. 556. How old?

A. 89 years old.

Q. 557. On which side of the tree had it been blocked?

A. On the side up the river.

Q. 558. And which side did you block it?

A. On the side down the river.

Q. 559. Describe that tree?

A. The tree was a chestnut oak. I never measured the diameter, I suppose something like 20 to 24 inches in diameter. It leaned towards the water, rather a scrubby looking tree.

Q. 560. Where is that block?

A. It is here.

Q. 561. It is in your possession, isn't it?

A. Yes sir. Here is the block. Here is the hack, here is the main hack, here is the blaze.

Q. 562. I don't know anything about blocks—I just want to know if you have it in your possession?

A. Yes sir.

Q. 563. Who was with you?

A. Mr. E. C. Debity.

Q. 564. He is one of the witnesses in this case?

A. I don't think he has ever been a witness in this case.

Q. 565. Do you know who blocked it upon the upper side?

A. I don't know.

Q. 566. Was the blocks taken out on the upper side?

541 A. Yes sir, a piece taken out on the ground.

Q. 567. Any marks on it to show it was fresh?

A. It was fresh.

Q. 568. A freshly blocked tree?

A. Yes sir.

Q. 569. You don't know why Gannett didn't block it?

A. No sir I don't know.

Q. 570. Had you been along that line before?

A. The only time I had been along there was when I made the survey. We were in a hurry when I made the survey through there and I didn't have sufficient time to make the investigation and I overlooked this tree.

Q. 571. Don't you know that tree that Gannett found there and bore marks on it was an 1858 marked tree?

A. Yes sir I know it was marked about 57 years ago, carried that mark, shows it in this block. There is the blaze to it and there is the mark to it on the ground. (Witness indicating from a block.) When I got into it — was blocked 57 years ago.

Q. 572. Did you cut the tree down?

A. No sir.

Q. 573. So you destroyed both sides of the marks on the tree?

A. Only on one side.

Q. 574. You found the tree blocked on the upper side and you destroyed all the marks on the lower side?

A. Yes sir.

Q. 575. Now where do I understand you to say, Mr. Burns, this line between the States reaches the river?

A. About a half mile above Slick Rock Creek.

Q. 576. Then makes an offset down the river about a half mile towards Slick Rock?

A. Yes sir.

Q. 577. Now then I call your attention to Exhibit "X" to your deposition, and which I asked you to file as such exhibit on yesterday. Tell me what that is?

542 A. It's a copy on a reduced scale of the map filed in the case here two years ago in Knoxville, made by H. E. Libby and myself.

Q. 578. What is this line on that map, from "A" to "B"?

A. It was put on there for the purpose of a test line. We designated them as test lines in that case.

Q. 579. Didn't you in substance testify in that case that the State Line ran from a point where this line "A"-"B" crosses the marked line straight to the mouth of Slick Rock Creek?

A. No sir I did not.

Q. 580. This line which on the commissioners' map of 1821 crosses the river, does it on a straight course, don't it?

A. It shows a straight mile on the opposite side of the river.

Q. 581. Didn't you in substance testify in that case that you were formerly of the opinion that that last straight mile was that part of the line "A"-"B" running back from "B" to where it crossed the State Line as you marked it down there?

A. No sir. I took the bearing as near as I could of that straight mile from the original plat of 1821 and produced it back from "B" to the mouth of Slick Rock Creek and found its intersection with the State Line back on the main ridge as surveyed by me and I further testified that there was a place along the Smoky Mountain ridge about a mile from the mouth of Slick Rock following back the way we run the State Line where you could see the mouth of Slick Rock or the gorge where it came out and I stated in my deposition that they took a bearing from the mouth of Slick Rock Creek and that they recorded that bearing in their notes, and that the chain markers and chainmen made their surveys from the mouth of Slick Rock and when they platted their course they straightened the distance out.

Q. 582. Mr. Burns, wouldn't the distance from where that line "A"-"B" crosses the line as marked be much more than a mile?

A. I am not saying anything about the line "A"-"B", it is a test line to Slick Rock Creek. This other line was plotted backwards from the point "B" from the point on the map of 1821, which is a separate and distinct line on my exhibit "X" and which is a black line.

543 Q. 583. Then that isn't the line running back from this line "B" as it crosses or meanders the ridge down to the river?

A. The black line as shown on Exhibit "X."

Q. 584. Now this map came from the office of the Clerk of the Court of Appeals and was furnished to me as being a copy of your map used in that case?

A. It is a copy in every way except that line doesn't appear on it. It was put on the original one that was filed with my deposition at that time. It showed the line as run down the river and then I showed a black line.

Q. 585. Now let's see if you didn't say this about that line in your examination when you were a witness for the Hopkins claimants under the bill of review in the Circuit Court of the United States at Knoxville, and turn to page 69 of the printed record in that case Mr. Burns if you like.

"I started as I have designated before from this road where it crosses the Smoky Mountain. I started the transit line at that point

in which I turned all the angles and measured with a horizontal chain all the distances over the line. In order to get my bearing I took observations on the North Star to get a true North and South bearing, or true meridian, you might say, and in running this line about half way——

Q. 30. (Interrupting.) Wait a minute, please; don't use the word "this"; just designate that line in some way, so that others may understand it. On paper it won't be understood.

"A. (Continuing:) At a point about two miles from the mouth of Slick Rock Creek I took another observation on Polaris, the North Star, and I found that my course was still right:"

What time did you take that observation?

A. I suppose the date is recorded in my field book. If you want it I can look it up.

Q. 586. I don't mean the day of the month—what time in the day?

A. At night when the star was visible.

544 Q. 587. How long were you taking it?

A. Just a few minutes.

Q. 588. Then proceeding to read your answer to Question 30, as follows:

"There was practically no variation from the beginning. And then at a point a mile and one-half from the end of the line I took a third observation on Polaris and found that my course was still exactly right."

How long did it require to take that observation on Polaris?

A. Not very long.

Q. 589. About how long?

A. About half an hour, I would say, may be a little more or a little less.

Q. 590. A little more than a few minutes at that time?

A. What I mean by a few minutes—when you take your instruments to the place of observation and you have your instruments all there and by turning your hub to the North Star and taking an angle and taking two or three observations, 15 to 30 minutes is a plenty of time after you get on the ground to take an observation.

Q. 591. I will read some more from that answer to Question 30:

"Well, now, in working up this survey I figured on every line the exact amount South and the exact amount West; every angle in that line makes from the beginning point. Now that system was carried clear through the survey, and this map Exhibit "B" shows a series of parallel lines one way and crossed another way, in which one set of them are the true North and South and the other set of them are the true East and West, and we will find the numbers written along these lines which designates how far each one is South and how far each one is West from the beginning point of the survey. That is at the bottom of this Exhibit "A."

Now that Exhibit "A" in that case was a copy of the map of 1821?

A. That is an error, it was Exhibit "B," of which this Exhibit

"X" is a copy. That was an error on the part of the stenographer.

545 Q. 592. Continuing your answer to Question 30 reads:

"This work was thoroughly worked up and checked up so that we are sure that there is no error in the exact position of every point with reference to the true South and the true West. So that in the platting of this survey we believe it to be, and in fact is absolutely correct, or as nearly so as can be scaled to a scale of that size: and also I guess it is necessary for me to state that I have ran two other lines in connection with the one that I have just described, beginning on the Smoky Mountain side, Station 144, plus 80, on the North side of the Tennessee River, and I started there another line in which I followed the ridge leading up to the Hangover and from there to the Stratton Bald, and thence to the junction of the Fodder Stack mountain. Well now this system about these lines which I spoke about a while ago—about running North and South—I used the same system in platting this line going by the Hangover Lead which I have just described. I have used the same care in the platting of that line that I have in the other line which I have just described. Now, in running the first line from a number of points along that line I turned angles from my survey to the Hangover, which is a large rock, known as the "Hangover" in that country. There is a check on the accuracy of this survey that I have run over the Hangover Lead, and I find that all these angles that I turned lead me right square over the Hangover, and which I have located on this map. That is just a test of the accuracy of the work. It is so close that you can't designate by a scale any error in it. I have run also a third line, which commences about a mile and a quarter South of the Little Tennessee River, and ran up a lead leading to the Little Fodder Stack, and thence from the Little Fodder Stack around the main lead to the Big Fodder Stack, and I have also used the same care in figuring and platting that line that has been used on the other two. With a careful examination of these

546 three different routes that has been run and explained on Exhibit "B" there is only one of them that corresponds to the map of 1821, and that line corresponds surprisingly close to that map, and that line goes from the point at which I commenced on the Smoky Mountains to the Tennessee River at the mouth of Slick Rock Creek, and thence follows up Slick Rock Creek to the Big Fodder Stack lead, thence up said lead to the Big Fodder Stack, thence along the main lead to the Stratton Bald, or a little West of the Stratton Bald at the junction of the Hangover ridge. All along this line that I have just described, which runs up Slick Rock Creek, I have found various marked trees and blocked a number of said trees, which clearly points out to my mind that the line was actually run in 1821 over that route and no other route."

You said that, didn't you, in answer to Question 30?

A. Yes sir

Q. 593. Now in examining your testimony in the bill of review

case, I find the further question put to you by the Hopkins claimants, which is No. 98:

"Q. 98. I notice a black line on your map Exhibit "B" on the North of the river. Will you please explain that?"

"A. We notice that the map of 1821 indicates a straight mile from the South side of the Little Tennessee River Northeast. I have indicated on this map Exhibit "B" a black line which indicates the direction and distance from the point B to where it strikes the ridge as run down by the river and shown in red, the line being as scaled off 5,800 feet."

Now you said that, didn't you?

A. Yes sir.

Q. 594. Now you say this map, Exhibit "X" to your deposition, doesn't show that line, do you?

A. It shows a dash line along there, but I never noticed it when I said it didn't show, but I don't know whether that is the black line we put on there or not. It is put there a dash line to the map of 1821.

547 Q. 595. Well there is along that line running from B to A and deviating from it just a little bit on this map Exhibit "X" is a dotted or dash line laid down, isn't there?

A. Yes, sir.

Q. 596. And that is marked from the map of 1821, 5,800 feet, isn't it?

A. Yes, sir.

Q. 597. Well now that is your line of 5,800 feet that you were talking about in your answer to question 98 in the bill of review case?

A. I don't know, I would have to see the original map that I put it on.

Q. 598. That is about the location, isn't it?

A. Yes sir. What did I say the length of that line was?

Gen. CATES: 5,800 feet.

Q. 599. Now that is the line that you say that the commissioners meant by that line laid down on the map of 1821 which crosses the river?

A. The black line that I laid down on the original plat was put on the original plat from the bearing that I got off the orignal plat and as I said before that when you project that line back and let it intersect with the line that I actually run on the Smoky Mountain it comes pretty close, there is a place along that Smoky Mountain that comes pretty close there, and from which you can see the mouth of Slick Rock Creek, and as I stated a while ago I believe when they reached that point where they could see the mouth of Slick Rock Creek they sketched that line in on the map.

Q. 600. And made it a straight line from that point?

A. Yes sir.

Q. 601. Didn't you say that that line 5,800 feet from a tree on the South bank of the Tennessee river running back to where it intersects the marked line North of the ridge as is laid down on this map,

Exhibit "X" is the line between mile trees which crosses the Tennessee River?

A. No sir, I didn't say that.

Q. 602. For what other purpose then, could you put it on your map?

A. It was just put on there to illustrate one of those places. As I stated a while ago, possibly it was yesterday in my testi-
548 mony, as the commissioners were in a hurry in running this line they probably *cited* from the highest points of the ridges and they didn't take into consideration all the little turns, and it is my belief that they *cited* from the other side of the Smoky Mountain and when they followed along the Smoky Mountain and could see the Slick Rock Creek that they took the bearing from there and they followed down the ridge and sent their chain markers and chainmen around to make the measurements.

Q. 603. How far back from the Tennessee River is the point on the State Line where this line 5,800 feet coming from the mouth of Slick Rock Crosses it?

A. Well as I have shown it on the map filed to my deposition it would be a little more than a mile. I am not sure that the point that I have shown on my map was the point where they call it the Slick Rock Creek. I know there is a point about a mile from Slick Rock Creek where you could see the mouth of Slick Rock Creek.

Q. 604. And a ridge running down from the mouth of Slick Rock Creek?

A. That is further back where you could see Slick Rock Creek from the Smoky Mountain.

Q. 605. Then you run down the ridge to Slick Rock Creek?

A. No sir.

Q. 606. Then you run all the way down the ridge?

A. No sir.

Q. 607. Haven't you testified the reason you didn't run that ridge it was too rough—you couldn't walk it?

A. I said I walked around that ridge and searched for marks. I testified further that this straight line that we was speaking about that I walked to the mouth of Slick Rock and after taking this bearing the best we could off of this map in 1821, I attempted to use that bearing and measured a line along Slick Rock Creek back to the Smoky Mountain for the purpose of trying to find the 61th M. tree and after running that line back and measuring it we run into clifts. My brother was a party that helped run down that ridge.

549 Q. 608. Now I want you to put down on this map, blue print copy of Exhibit "D," both that line "A"-"B" and also that 5,800 foot line?

A. I can put down the line "A"-"B" and I can put down the 5,800 foot line from some of the certified copies that you have of the original map. The certified copy of the map I have here is not like the original. I have not see- any two copies the same of the State Line.

Q. 609. Put down first that line "A"-"B." Now mark it in red ink and put down "A"-"B" in the proper place?

A. All right, I have so marked it.

Q. 610. Now then put on in ink the 5,800 foot line as a dotted line in the same manner as it appears on this Exhibit "X?"

A. I have done so.

Q. 611. Now further examination of this map Exhibit "X" convinces you, does it not Mr. Burns, that that 5,800 foot line is laid down with approximate correctness on this Exhibit "X?"

A. I believe that it is.

Q. 612. The original of which Exhibit "X" is a copy on a reduced scale showed the line as run by you where you found marked trees laid down in red?

A. Yes sir, it showed in red on the Smoky Mountain side down to where we came to the Tennessee River and then I don't think we colored it red from Slick Rock to the river.

Q. 613. And then you laid down this black line and called it a black line in that deposition, didn't you?

A. Yes sir.

Q. 614. You were examined about that black line as follows:

"X Q. 13. The black line from the river on the North side extends back Northeast; for what purpose it that made?"

"A. Well, that black line—you will notice on the map of 1821 they show a straight line which ends on the South side of Little Tennessee River, and that black line is put there from the same bearing that is indicated on the map of 1821 for that straight line and is produced back until it intersects the ridge in-
550 dicated by the red line and scales 5,800 feet—a little over a mile."

That is what you said?

A. Yes sir.

Q. 615. And then you were further examined as follows—in that bill of review case:

"X Q. 14. Then from that 5,800 feet as indicating the line shown on the old map of 1821 does not correspond with the line as you marked it and shown by your red line from that point on to the river; is that correct?

"A. It don't correspond with the marks I found which led me down to the Tennessee River at that point."

That is what you said?

A. Yes sir. I meant that the black line didn't lay in the position that we found the marked line.

Q. 616. Are your answers to X Q 13 and X 14 true?

A. Yes sir.

Q. 617. You were also further examined in that bill of review case, as follows:

"X Q. 15. And it does not correspond with the red line as shown on your map Exhibit "B"?

That is in the bill of review case, does it, that black line don't?

A. No sir.

Q. 618. Your answer was:

"No sir; that red line does not."

"X Q. 16. The black line shows the line as indicated on the map of 1821, does it?

"A. Yes, sir; that is it".

That was your answer, wasn't it?

A. Yes sir.

Q. 619. Mr. Burns, how much further is it around by the way you found the marked trees and thence down the river to Slick Rock, than 5,800 feet?

A. The measured distance is 8,269.

551 Q. 620. The measured distance is 8,269 feet?

A. Yes sir.

Q. 621. About a half a mile further than the straight line?

A. Not as much as a half a mile, less than a half a mile.

Q. 622. Something like 2,400 feet?

A. Longer than the straight line.

Q. 623. The difference between these two figures, whatever that is?

A. Yes sir.

Q. 624. Now Mr. Burns, suppose you had just been furnished with a copy of the Cession Act from North Carolina to the general government and then the description of the Eastern boundary of Tennessee and the Western boundary of North Carolina, as called for in that Cession Act, and directed to go out there and run that line following the extreme heighth of the mountain, where would you have run that line along from Gregory Bald or the 59th M. tree on toward the Tennessee River, and where would you have crossed the Tennessee River?

A. What is the direction of the Cession Act on that point?

Q. 625. Have you read it?

Mr. SONDLEY: The state of North Carolina objects to this as irrelevant and immaterial.

A. Perhaps I have, but I don't recall. As it comes to the Tennessee River, possibly two miles or three may be at the first big bend in the river to the left below the mouth of Slick Rock Creek; cross the river at that point and back up the ridge that leads up Stiff Knee, Little Fodder Stack and the Big Fodder Stack and then around the undisputed line.

Q. 626. Where would you have left the top of the main mountain, on the North side of the river?

A. I don't think I was back of the mountain where that ridge leads off. I have seen it from the high peaks in the other country I have been in. I think it leads off right across from Gregory Bald. It is the one that points to the Tennessee River from the first big main ridge.

Q. 627. You think the main ridge turns sharply to the
552 right and leaves the river some two and a half miles below Slick Rock?

A. I think that ridge, the one that leads down to that big bend below the river is the one.

Q. 628. That is what you would call the main mountain?

A. That is what I would call the main ridge. There is no doubt about it in my mind about it being the main mountain that runs along there. These other ridges and mountains that they run the State Line are only spurs.

Q. 629. Now Mr. Burns, when you and Libby went out there in 1908, that was after you were informed by Mr. Hopkins and Mr. Cozad the Circuit Court of Appeals at Cincinnati had decided the case against the contention of the North Carolina claimants and after they had come to the conclusion that this recently discovered map of 1821 showed the State Line running up Slick Rock Creek, wasn't it?

A. Yes sir, I went out there after this map was discovered, and it was handed to me and I was instructed to take it along.

Q. 630. And they were relying upon that map of 1821 and that line up Slick Rock Creek to secure them a re-hearing of the former case?

A. Yes sir.

Q. 631. Have you read Judge Lurton's opinion in the original case of Hebard v. Belding?

A. I don't think that I ever did.

Q. 632. Well, now, isn't it a fact, that there are some very old marked trees over here on Fodder Stack Ridge which are entirely off of any line claimed by North Carolina—did you find any such trees?

A. I don't quite catch what you mean by that question.

Q. 633. Over in the neighborhood of this Fodder Stack Ridge there are some trees, two or three at least, bearing old State Line marks which are entirely off of any line claimed by the State of North Carolina as being the boundary line between the States?

A. All the trees that I found was right along the top of the mountain.

Q. 634. You didn't find any trees away from this line that you run from Fodder Stack to Junction bearing State Line marks?

A. I found a number of trees along that ridge that I have indicated on the map.

553 Q. 635. I mean away from that line as you run it; didn't you find some trees bearing State Line marks?

A. I don't believe that I ever saw any—I was going to say that I never was off the top of the mountain along there. All the surveying I did was just on the top of the mountain.

Q. 636. You just run the line on the top of Fodder Stack Ridge to Fodder Stack and the Junction and didn't look for any trees on either side of that ridge and away from it?

A. That is it.

Q. 637. Then you don't know where those trees are away from any line claimed by North Carolina?

A. No sir, I don't know where those trees are.

Q. 638. Do you know of any trees away from Little Fodder Stack and Big Fodder Stack?

A. No sir. No original marks along that lead that I was ever able to find. I found some recent marks.

Q. 639. How recent?

A. I don't know whether I ever blocked any of them or not, corners between 10 and 20 years old.

Q. 640. You know who did the marking?

A. I do not.

Q. 641. Isn't there some trees along that line between Little Fodder Stack and Big Fodder Stack over 70 years old, bearing State Line marks?

A. The question you asked me a while ago from Big Fodder Stack to the Junction and the answer given is correct, and the line that I run up Slick Rock Creek I found two different lines, the trees were about 73 years old that I took to be old section lines.

Q. 642. Bore State Line marks, didn't they?

A. As well as I remember the ones that I saw was marked with three hacks, and we blocked one of them, and my recollection of it we counted it 73 years old. That was two years ago that we did the blocking. I might be mistaken as to the number of years, but I know it was up in seventy.

Q. 643. Now, Mr. Burns referring to your testimony on
554 page 319 of the copy furnished to the State of Tennessee, you say that you followed up Slick Rock Creek a mile and a quarter according to the scale of the map of 1821. Now I will ask you to state if it isn't a fact that the line as it appears marked on the map of 1821 leaves the stream marked a "creek" there about a half a mile from the river?

A. There seems to be a little angle in the line there that the sketching of the creek on there doesn't seem to take in.

Q. 644. But before you reach the elbow or turn to the South of that stream marked a "creek" doesn't the line depart from it something like a half a mile?

A. No, it isn't a half a mile.

Q. 645. Now how far is it?

A. You are speaking about this departure from there to there (Indicating on the map) I presume?

Q. 646. Yes sir—well that first one?

A. It is about a half a mile up the creek where it makes the departure.

Q. 647. How far does it leave the creek?

A. Oh, looks to me like 1,000 or 1,500 feet, guessing at it.

Q. 648. Then it runs a little bit back to the river?

A. Yes sir, the next angle right on the creek.

Q. 649. That is a mile circle there, isn't it?

A. Yes sir.

Q. 650. Mile circle between the line and the creek?

A. The mile circle seems to be right in the edge of the creek.

Q. 651. And the next departure leaves the creek still further?

A. Just a little bit further, possibly between 1,500 and 2,000 feet, may be.

Q. 652. Well now at the end of the second mile circle from the mouth of the river, how far from that scale of the map of 1821 is the end of the line from that stream that is marked "creek"?

A. Something like a mile, a little less than a mile.

Q. 653. Mr. Burns, I call your attention to little black dots or black points between mile circles at a number of places on the line of this map of 1821. What did I understand you to
555 say those black dots or points indicated—a slight change in the course?

A. Marks a slight change in the course what I understand by them.

Q. 654. Now Mr. Burns, if there was such a bend in the line which crosses the river, as you have indicated on your map, Exhibit "D", so as to twist the line down to the mouth of Slick Rock Creek, isn't it reasonable to suppose that there would have been a black dot in that line?

A. Why, I explained that when I was talking about the black line. I think when they reached the point on the Smoky Mountain where they could see the mouth of Slick Rock Creek, that is, the point from which they took their bearing, they sketched in the streams instead of taking the courses and distances as we would have run it now and showed the courses and distances on the map, and there would be a number of dots from those mile circles which they show straight, because I believe they just plotted the distances and showed it about straight.

Q. 655. And if they platted the distances around there straight they had a straight line for a mile where the measured line run for about 8,200 feet?

A. That point that we designated 8,200 feet back there is where we selected as the point from the bearing where the intersected line would run and possibly they took the line further down the mountain and the measured distance was about a mile.

Q. 656. But I understood you to say that that black line which you say is about 5,800 feet line running down to the mouth of Slick Rock indicated the last line or the line in the commissioner's map which crossed the river, didn't you?

A. No sir, I want to be clear about that black line business. That black line, the bearing of that black line was taken from the original plat of 1821 and it was platted upon the map made by myself from the mouth of Slick Rock backwards until it intersects the line as run by me on the Smoky Mountain side.

Q. 657. And you also said from that point or intersection you could clearly see the mouth of Slick Rock Creek, didn't you?

A. No sir, I didn't say that. I said there was a point on Smoky Mountain about a mile from Slick Rock Creek you could see
556 Slick Rock Creek and it was an oversight on my part from not seeing that point and I did say this bearing was taken from their plat. I don't claim that the intersection of that point is the exact point where the commissioners could see the mouth of Slick Rock Creek, possibly there was some variation in it.

Q. 658. But you did say that from the point where the line "A"-"B" crossed the marked line you could see right into the mouth of Slick Rock Creek?

A. There is a point along that mountain where you could see the mouth of Slick Rock Creek.

Q. 659. Where is that point?

A. I didn't tie it in but I know there is such a point there.

Q. 660. Do you claim that the line between North Carolina and Tennessee is this 5,800 foot line or the marked line leading down to the hemlock on the North bank of the river and thence down the river on the North side to the mouth of Slick Rock?

A. Of course it is a matter of opinion. My opinion is that where they marked the line is the State Line and when they cited from the highest points on the main ridges, they just sketched in the streams and the surrounding country. I believe the State Line comes to the river where that fore and aft tree is called for and then down to the mouth of Slick Rock Creek and then up Big Stack Ridge *and then up Big Stack Ridge* around to the main mountain.

Q. 661. Well now on the South bank of the river where the Hangover ridge or lead comes to it just above the mouth of Slick Rock, there is a prong or branch of that ridge runs down the river just above the mouth of Slick Rock, or rather in the junction between Slick Rock and the Little Tennessee River, isn't there?

A. Yes sir.

Q. 662. Well another prong or another part of it runs just opposite the spruce pine?

A. No sir, no ridge by the side of it.

Q. 663. What is it?

A. Just a steep mountain bluff.

Q. 664. You say a man couldn't get over that bluff?

557 A. I didn't climb up it, but if a man did get up it it would be a very hard task. I would hate to undertake to climb it.

Q. 665. Now to avoid any accident that may happen to you or failure to indicate upon the original of this blue print the elevations which you have noted on it around the Hangover and Fodder Stack leads and other places—the elevations being taken from the government map—I will file this blue print as Exhibit "Y" to your testimony, but I have asked you to place those elevations upon the original map which you have filed as Exhibit "D"?

A. Yes sir, I will do so.

Q. 666. And I also ask you to place on that Exhibit "D" the elevations which you have testified to taken from the government map of Rocky Knob and McDaniel Bald?

A. Before I put those elevations on there will you allow me to take the blue print with me, or that I will have a copy of the testimony?

Gen. CATES: You will have a copy of your testimony to refer to.

Q. 667. Running from the Tellico River where you crossed it down there below the butt of State Ridge and going up by that holly which you say was marked, doesn't that line as you run it cross a branch between the holly and Jenks Knob?

A. No sir, just a little wet place in the ridge. I don't know whether there is water in it all the year around or not. I would not

call it a branch—it is not a branch—possibly a little spring seems to come up pretty near the top of the ridge.

Redirect examination.

By F. A. Sondley, Esq., on behalf of complainant:

R. D. 1. You were asked Mr. Burns on your re-cross-examination about your experience as a surveyor during the portion of your life that antedated the running of this State Line by you. How much surveying had you done as a surveyor before your graduation?

558 A. When I first commenced to survey I was about 16 years old. That has been about 18 years ago, and I have done more or less surveying from that time until I entered college. I entered college in the Fall of 1898, and then all the spare time that I had I continually worked at surveying, land surveying and other branches of surveying; all the time I was in college and since my graduation in 1901 I have followed no other profession. I have surveyed a number of coal field-; have had a great deal of experience in looking up old marked lines and establishing lost lines and so on up until the present time.

R. D. 2. When did that experience in looking up marked lines and examining them and looking up lost lines begin?

A. That commenced almost since I commenced surveying, about 18 years ago.

R. D. 3. To what extent did it involve the use of old plats?

A. Well in most every instance I had some kind of rough sketches or plats, unless I was running lines that had never been run before or somebody selling off land that had never been run before. I have had experience in running lost lines ever since I was engaged in surveying.

R. D. 4. The work that you spoke of as office work—to what extent did that work make it your duty to examine and construct plats of lines on the ground and on the surface of the earth?

A. That office work that I spoke of I was chief draftsman of the office of the Niva Coal & Coke Company at Berlin, Pa. and I had furnished me all the rough plats and sketches that those people had in the vicinity in which they were buying lands and I had furnished me a copy of the field notes of the entire survey of the number of tracts that made up the large boundary and I checked up all the work and if I found there were any errors I had to send it back to the field men to check and it was all done under my check and management. While I done very little work in the field, still it was all done under my management, the platting entirely.

R. D. 5. Since you began your connection with the controverted State Line in litigation what surveying had you done and of what nature?

A. Well with the exception of possibly a month or six weeks after I made the survey of the State Line from the State Ridge to

559 the mountain ridge on the Smoky Mountain and the Junction and the lines over the Little Fodder Stack and Big

Fodder Stack I have been engaged continuously in surveying lands in Graham County.

R. D. 6. Of what State?

A. In North Carolina, which join the State Line in dispute and beyond the disputed section and in the disputed section, and I have surveyed principally and caused to be surveyed under my direction I suppose about two-thirds of the county, and I have had the experience in the past two years of looking up these old marked lines and I have found tracts of land that they have never been able to find before and unraveled some pretty hard propositions that nobody had ever been able to do until I had gone into the country and made my survey.

R. D. 7. To what extent did that recent work referred to by you before you began the State Line work involve the use of State grants?

A. On most every one of them there was a certificate or survey that showed a tract of land, also had other old sketches and maps handed me that different surveyors had made from time to time all through the survey.

R. D. 8. You testified, I believe, that you were engaged in this State Line survey originally by Mr. Cozad or Mr. Hopkins?

A. Yes sir.

R. D. 9. And I understood you to say that you were even now engaged in some surveying work in the country in the adjoining counties, possibly of Swaine and Graham, N. C., or may be entirely in Graham County, N. C. What is the correct statement about that—is it in Graham or Swaine?

A. It is in Graham County the lands that I am surveying for Mr. Hopkins and Mr. Cozad and the Whiting Manufacturing Company.

R. D. 10. You say that was because I believe of a deal between them?

A. Yes sir.

R. D. 11. What are your powers of determination between you in regard to surveying matters?

A. I don't quite catch your question.

R. D. 12. What power do you have in surveying matters
560 that may arise between Mr. Hopkins and Mr. Cozad on the one side and the prospective financiers the Whiting Manufacturing Company on the other hand?

A. I was employed by Mr. Hopkins and Mr. Cozad and also by the Whiting Manufacturing Company jointly and each one of them pay one-half of the expense of the survey, and I was employed by them to run the lands that were in the trade between the two parties.

R. D. 12. How far is your survey conclusive—have they anybody over you?

A. No sir. I am the chief engineer of the whole survey. I have working under me some two or three different parties. My brother was one of them and Mr. Denton was another one.

R. D. 13. I believe you testified that when you went in first on this State Line investigation Mr. Cozad directed you to find where the true line was?

A. Yes sir.

R. D. 14. And that then you represented him and Mr. Hopkins only?

A. Yes sir.

R. D. 15. Suppose you had been instructed by them to run to cross the Tennessee River at the mouth of Slick Rock and then go up by way of Little Fodder Stack and thence by way of Big Fodder Stack to the Junction, would that have given Mr. Hopkins and Mr. Cozad more or less land than if you had insisted upon going up Big Fodder Stack?

A. More land, possibly 3,500 acres.

R. D. 16. Was your decision then as much in favor of Mr. Cozad and Mr. Hopkins as it might have been?

A. No sir.

R. D. 17. Mr. Hopkins and Mr. Cozad, I believe, are not surveyors?

A. No sir, never heard if they were.

R. D. 18. You testified, I think, that you hadn't been on your work more than 24 hours before you concluded that the true State Line must run to the Tennessee River and cross it at the mouth of Slick Rock Creek and go up to Big Fodder Stack, or about that way, although you might not have concluded as to those details.

561 A. That the general course of the map as furnished me would undoubtedly take me up Slick Rock Basin and up the top of the mountain to the Big Fodder Stack.

R. D. 19. How could you reach that conclusion in such a brief length of time?

A. I was handed this map of 1821 by Mr. Cozad and I was instructed by him to take that plat as my guide and from that to see if I could find the State Line as was originally run by the commissioners and I took that plat as my sole guide and the plat showed the Tennessee River on it and it showed that it crossed the Tennessee River at the mouth of a stream marked "creek" upon the plat and which I believed to be Slick Rock Creek and I took the general course off of the plat of 1821 from the mouth of this creek marked on it to the first decided angle that it made in the general direction to the left; possibly a distance of 6 or 7 miles from the Tennessee River and after having obtained that bearing from the meridian shown on the map I set my compass opposite to the mouth of Slick Rock Creek where I could get a good view of the high peaks and Slick Rock Basin and in that way tried to find out in what general course the commissioners did run the State Line after crossing the Tennessee River and I found after setting upon this bearing that it couldn't possibly reach the Little Fodder Stack, as I possibly thought that it would from my conversation with Mr. Cozad and Mr. Denton. I then abandoned the idea that it could ever reach Little Fodder Stack and follow the plat that I was instructed to follow. I also found it was impossible to go over Hangover and follow the plat. I also found that the general course of the plat took me up over Slick Rock Creek as the State Line followed natural objects and it followed up Slick Rock Creek for some distance and after you left that creek, you would naturally think that it would

naturally follow up the creek to some mountain, and I found some old corner trees, blocking a few of them, and I found it plainly where it left Slick Rock Creek and I found trees up that lead and a number of trees around Fodder Stack up to the main ridge.

R. D. 20. And after following that general bearing and finding that it could not take you over Little Fodder Stack and over
562 Hangover, what was the first step you investigated to see that it would not take you over the State Line?

A. I commenced my investigation at the State Road where it crosses the Smoky Mountain along some marked trees down to the Tennessee River, which took me down the Tennessee River about a half a mile above the mouth of Slick Rock Creek and I was satisfied then after following the marks down the Tennessee River that the stream marked "creek" upon the original plat of 1821 was Slick Rock Creek, because it was the only creek coming into the South side of the river. That made me more certain that my line up Big Fodder Stack and the Creek was correct.

R. D. 21. And then when you crossed the river, what line did you first investigate to find whether it was marked or not?

A. Well I searched along the creek on both sides of the creek for the original marks. About a mile up the creek or may be a little more we blocked one of the trees, the hemlock, cut the original marks out of it, and blocked other trees all along.

R. D. 22. Now you have spoken of the map of 1821, and I understood you to say that for the location that you were seeking—ridges being called for and trees upon them—you thought that a sufficient guide and sufficiently accurate in its directions to tell you where to go. What is the rule of surveyors in following old maps, a rigid adherence to every possible detail of that map, or a more liberal construction?

A. No sir, it is a more liberal construction in following old grants or old deeds in which they call to begin on a certain tree, they describe the kind of a tree and give the course and distance to some other tree and describe that tree and where it is possible to find the tree in which they started to surveying and if you try the course given in the grant which they say will let you to the next tree, ninety-nine times out of a hundred, I would say, you can't follow the old marked line exactly to the course called for. If the line is a mile long you will miss it sometimes 100 feet, sometimes 200 or 300 feet, and it has always been the rule in surveying where I have ever surveyed and I believe the law is, as I understand the law, that where monuments can be found where there is no mis-
563 take as described in the deed, you must go to those monuments regardless of the courses and distances given in the grant or deed. If you find the distance longer you must go to the monument called for, and if it is shorter you must go to the monument.

R. D. 23. How does that rule tally with your experience as a surveyor?

A. Very close. In my experience as a surveyor I have found

some courses very long but still found the line leading from and going to the natural object.

R. D. 24. When you learned the age of the plat which was given you to be followed, did you expect to be able to locate every turn on the mountain ridge exactly in accordance with that map?

A. That would be ridiculous to expect to find every thing on the ground in accordance with the plat, and I did not so interpret it. What I expected to find and all that would be required of the plat to get courses from it in a general way, or else you could get the small angles indicated upon it, if it showed them, by taking a general bearing, or by taking the bearings of the small angles shown upon it and start upon some known point not in dispute on the State Line by some known mile tree and by using the plat to some known mile tree on the plat it will take you close enough to where the commissioners run the line to enable you to find the marked line.

R. D. 25. Did you find that plat, by interpreting it in this way according to your own experience as a surveyor—did you find the old marked lines in the territory?

A. Yes sir, I was surprised to find that it was as close as it was.

R. D. 26. Now you said when shown an exhibit to the testimony of a man by the name of Onley Williams that while it purported to be a certified copy of the map of the commissioners and surveyors of 1821, you had never seen two of those certificates that exactly agreed with each other?

A. Yes sir, that is true.

R. D. 27. Did you find anything on this exhibit to Onley Williams' testimony that you notice as different from any other copy that you have seen, or purported copy as certified from the map of 1821, to which I have referred?

564 A. Why the mountains as shown upon this one, the ridges and so on, it don't appear on this map like they did on the one that I had, and it don't seem like the stream marked "creek" where the State Line crosses is exactly the same as the one I had and where it follows up the creek for a mile and a quarter.

R. D. 28. Now I notice marked on this exhibit to Onley Williams' deposition, what is stated to be the path to the Valley Towns and a dotted line along there. You notice any difference in that path to the Valley Towns as shown on that copy or another copy that you have seen or a purported copy certified as such of that 1821 plat?

A. Yes sir. As shown upon this plat, which is filed to Onley Williams' deposition, the path only comes to the line.

R. D. 29. On which side?

A. On the North side, and the one that I had showed it coming away from the North side, as I understand.

R. D. 30. Does it go with the State Line at all?

A. That it run with the State Line about two miles.

R. D. 31. In what direction?

A. Southeast and then came off in that direction. That is my recollection of it.

R. D. 32. You remember whether that became a material question

in following the calls given by the commissioners in their original report?

A. Yes sir, that original report calls for that trail, as I recall it.

R. D. 33. Calls for the point where it reaches it and leaves it?

A. Yes sir, that is my recollection.

R. D. 34. Shows them to be at the same place or a distance from each other?

A. A distance from each other as I recollect it.

R. D. 35. Now in your re-cross-examination a good deal of attention was given to the width of the Tennessee River at the point where the State Line is supposed to cross and also to the width of the creek where that State Line does cross it as shown on that map of 1821?

A. Yes sir.

R. D. 36. You stated, I believe, that the creek there at its mouth was how wide?

565 A. I believe I said about 800 feet.

R. D. 37. And I believe you said the actual width of Slick Rock was about 30 feet?

A. Yes sir.

R. D. 38. What would be the actual width of Cheoah River where it joins the Tennessee River?

A. Cheoah River at its mouth must be something like 70 or 80 feet.

R. D. 39. You were asked in your re-cross-examination if the first stream shown on the map of 1821, according to this copy attached to Onley Williams' deposition, which enters the Tennessee River above where the State Line crosses was not 20 Mile Creek, and you said you thought it was.

A. I said that 20 Mile Creek comes into the Tennessee River about the distance that this stream shows to come into it.

R. D. 40. How wide is 20 Mile Creek at the point where it runs into the river?

A. About 20 or 40 feet.

R. D. 41. State how wide this 20 Mile Creek was supposed to be according to the map of 1821, according to the scale on that map?

A. It is about 800 feet as near as I can determine by the scale.

R. D. 42. You said the width of Tennessee River as shown by that scale on the copy of the map of 1821, was what?

A. I believe I said about 3,200 feet.

R. D. 43. And what did you say the actual width was?

A. The actual width is between 300 to 325 feet.

R. D. 44. How nearly is that actual width the same taken at every point which any party to this controversy claims the State Line crosses it?

A. The average width of the stream along that section is about the same all the way down.

R. D. 45. What does then that discrepancy between the call of the map on the streams and for their widths tell you in regard to those streams in the matter of width?

A. All the streams that appear on this map that I know anything

about and I am familiar with most of the streams in the country where this controversy is—they are sketched on there entirely too wide—very much exaggerated.

566 R. D. 46. How do you account for that happening in that way?

A. Well it might be explained in two different ways. Coming to the Tennessee River the way that they marked the line if they had taken the distance to the river where they came to it and the distance to the river where they left it to the mouth of Slick Rock, or to the mouth of this stream called "creek" on the original plat, that would have given them a distance of possibly 3000 feet, and that might possibly explain why they sketched the Tennessee River on there that wide, and another reason might be and it seems that they have sketched all the streams on there in an exaggerated way.

R. D. 47. Was the streams measured all the way along there, or just sketched in there?

A. It goes to prove that the streams were all sketched in there, and it does not compare with the survey of the Tennessee River as surveyed by me and I made a check on it and know it to be correct.

R. D. 48. You have been asked if that stream marked "creek" there according to that State Line on the map of 1821 crosses wouldn't, as located there, run through the Hangover Ridge, if you assumed it to be Slick Rock Creek. What is your explanation of your answer that it would?

A. The stream on the original plat marked "creek," which we believe to be Slick Rock Creek, was sketched in in a rough way, like the Tennessee River and like all the other streams that appear upon the original plat of 1821, and it is exaggerated in width and also in length.

R. D. 49. And how about the location of the greater portion of it—how do you think that was put in—the direction of its course?

A. I presume it was put in by getting different views of it from different parts of the country.

R. D. 50. How much of that Slick Rock Creek would you say from your experience as a surveyor with old maps was actually located by measurement if we take that to be where the State Line crosses it?

A. Well I think they paid very little attention to the creek. They sketched it in in a very careless way. I believe they carefully measured up that creek or along the edge of it for a distance
567 of about 5 miles and they only show upon their plat of only about a mile and a quarter, but I notice that the general course of this thing marked "creek" on the plat of 1821 corresponds very closely to the course of Slick Rock Creek as it actually is—that is after crossing the Tennessee River or following up the Slick Rock Creek from where it empties into the Tennessee River they show it in a Southwest course for a considerable distance and then it turns almost a South course. Really the stream runs the reverse of North and Northeast and that is the way Slick Rock actually is and the principal error I see in it that they do not show

where the Southwest course is, but when they get on the Southwest course they exaggerated it both in width and in length, and another reason for believing that that is Slick Rock Creek by following the marked line that they went up Slick Rock Creek. That is the only stream on the left that they could see, whereas if they had gone up the Hangover lead they could have seen a number of other streams and ridges or mountains—Hangover and Stratton Bald, Yellow Hammer and the lead leading up to them, Bears Creek and Beaver Creek and Little Snow Bird and in fact you get a splendid view of all the streams in that country anywhere's close to the State Line, and I believe if they had ever been on those peaks that they would have sketched in a number of those streams not shown upon this map.

R. D. 51. At what angle of the Tennessee River does that stream marked "creek" upon the State Line as shown leave or approach the river?

A. Well it comes into the River where the river makes a bend, and the angle that it makes with the river up stream it looks to be about 60 degrees to me for the first half mile.

R. D. 52. What angle does Cheoah River make with the Tennessee River where they unite?

A. Right at the mouth looks about 30 degrees.

R. D. 53. That is not shown on that map of 1821 that you are now answering from—what are you answering from that it looks to be about 30 degrees?

A. I am answering from my survey of Cheoah entering into the Tennessee River.

R. D. 54. According to the knowledge you have of Cheoah
568 River, would this creek that we have been talking about that enters the State Line crossing the Tennessee River correspond at any point with the location of Cheoah River?

A. The entire trend of the stream doesn't correspond with Cheoah River in any way.

R. D. 55. How do they differ—Cheoah River and that location as put on that map where the State Line crossing is shown?

A. Well the general course of Cheoah River for 7 or 8 miles at least, in fact where it empties into the Tennessee River would be about North 45 West—very close to that.

R. D. 56. What course does the creek upon the map of 1821 leave or approach the Tennessee River where the line crosses?

A. The first mile and a quarter, about a mile and a quarter back from the mouth of the stream, I would say about North 30 or 35 degrees East.

R. D. 57. And the Cheoah is what?

A. About North 45 degrees West.

R. D. 58. What is the difference in degrees then between the entrance of Cheoah River into the Tennessee River and the entrance of this creek at the State Line crossing as shown upon the map of 1821?

A. About something like 80 degrees.

R. D. 59. Nearly a right angle, lacking only 10 degrees of a right angle?

A. Yes, sir.

R. D. 60. Which is half way in an opposite direction?

A. Yes sir.

R. D. 61. Now something was said about the inaccuracy of the copy of the map of 1821 in regard to its last line which crossed the Hiawassee River, and it is called for as running South, and you testified, I believe, that the true direction there given was South 7 degrees?

A. I testified that I believed that it was a few degrees variation from due South.

R. D. 62. Is that line so laid down as to enable you to find where the true line ran on the ground when you went there?

A. Yes, sir.

569 R. D. 63. Did you have any difficulty in finding the true line?

A. No sir, I followed it for possibly a third of a mile. It was blocked, block No. 10.

R. D. 64. How do you account for that discrepancy in the call of the map and the call of the surveyors' report as you term an inaccuracy in the map?

A. I always thought it was due to an inaccuracy in the copies of the map or some inaccuracies that had taken place after the map was made. I never have seen the original map.

R. D. 65. Did you ever see a photographic copy of it?

A. I saw a photographic copy of it.

R. D. 66. I wish you would point out if you can from this what I show you and tell me first what it is that you are using and then what appears on it to enable you to reach the conclusion you have spoken of?

A. In order to get the bearing of that part of the line which they said they run due South I undertook to check that bearing from the meridian which they show upon the opposite end of their map, and I see by a close examination of this photographic copy of the original it seems that the original seems to have been in several pieces and possibly in pasting them together that there have been some inaccuracies and they have been screwed around a little bit and in that way the bearing which you take from the North point which is on a separate piece and the line that you run due South might have got turned a little bit and this accounts for the line not checking with the line as shown by the meridian on the original plat.

R. D. 67. Do you see anything on there to show you that particular place?

A. There is a trail that seems to be off some distance. You can also see the line itself. In fitting it together they didn't do it exactly right or they were careless in not getting it to match that way. You might assume that they traversed the true meridan as shown on the map.

R. D. 68. Which of the sections that have been pasted together, do you find that screwing around—the most extreme right or left

or center of them, or you can say whether it is the Eastern or Western of them?

570 A. It is the most Western one that intersects the line.

Gen. CATES: Most Western—what?

The WITNESS: The map seems to have been in two pieces and pasted together. The most Western seam of the map that crosses the line.

R. D. 69. Would such a thing as pasting that Western of the three sheets together that constitute the whole map being a little out of place produce such an irregularity in that line as called for running South and crossing the Hiawassee River?

A. Yes, sir.

R. D. 70. Would that have any effect on the line at other points?

A. Wouldn't have any effect on the ones on which the meridian appears, I wouldn't think.

R. D. 71. Do you see that it could have any effect on any one sheet by itself leaving out of consideration the other sheet?

A. The light that I can see those are in now I don't detect any very great inaccuracy. Of course in pasting together two sheets, the one the meridian is on and the one next to it if it is not done exactly right there will be some inaccuracy.

R. D. 72. The one that I asked for—on the original sheet itself of the original plat would that matter of getting it on one, the Western out of shape, effect any one shown on itself get out of shape by pasting it together with another sheet?

A. No sir.

R. D. 73. Does that throwing that Southern line out of its true direction somewhat as compared with the meridian of 1821 on the Western sheet effect any portion of this controverted line?

A. No sir, it is not in the disputed territory.

R. D. 74. You have spoken of Rock Stack. Where is Rock Stack?

A. It is about one-third of the distance between Big Fodder Stack and the Junction. The first high peak between Big Fodder Stack and the Junction.

R. D. 75. Now in your re-cross-examination I understood

571 you to say in answer to a question that when you followed up Slick Rock Creek the marked line and thence went to Big Fodder Stack and over to Junction you went around the waters of Slick Rock Creek. What did you mean by that?

A. I meant that the water shed, or in fact most of the water shed of Slick Rock Creek was to the left. Of course, I followed the creek itself up for a distance of about 5 miles and the little streams that came in on the right going up on the right of that water shed of Slick Rock Creek was not included. All the portions to the left were, and the biggest part of Slick Rock Creek was to the left.

R. D. 76. Do you mean to say that you actually went all around the Slick Rock waters?

A. I just followed the waters of Slick Rock Creek as far as the Junction.

R. D. 77. That gave you a curve, or an approximate curve?

A. Yes sir.

R. D. 78. Extending from the river to the Junction, a rough curve?

A. Yes sir.

R. D. 79. With the open or interior side in what direction?

A. To the East.

R. D. 80. Suppose you start from the Tennessee River at any point where it is claimed by Tennessee the State Line should cross and come up by way of Hangover and Hayoe around the Junction, would that give you an approximate curve?

A. Yes sir, the curve would be the opposite direction.

R. D. 81. With the open or interior side in what direction?

A. Towards the West.

R. D. 82. Does your copy of the map of 1821 show a curve in going from the Tennessee River about that distance?

A. Yes sir.

R. D. 83. What curve does it show—with the interior to the East or to the West?

A. Interior to the East, as to the same matter as the line actually run according to the North Carolina contention.

572 R. D. 84. Then could that happen with a line run over by Hangover and Hayoe to the Junction?

A. No sir, not by any means.

R. D. 85. Was that a respect in which the map was of any service in running the line?

A. Yes sir, indeed, the map was of great advantage because there was a variation in the general bearing from the Tennessee River to Big Fodder Stack and from the Tennessee River to the Hangover, possibly 30 or 40 degrees.

R. D. 86. I don't know that I caught exactly your answer or rather your reason assigned. Please explain so that I will understand?

A. From the variation in the general bearing from the Tennessee River to the Fodder Stack is about 40 or 50 degrees difference from the Tennessee contention to the Big Fodder Stack and the North Carolina contention comes within a very few degrees of the general bearing upon the plat of 1821.

R. D. 87. You were asked repeatedly what you knew about where Tennessee claimed that the State Line crossed. Do you know where Tennessee now claims it to be?

A. My understanding is that according to Tennessee's contention they follow the marked line down to the Tennessee River to the fore and aft hemlock or spruce pine as it is very often called upon the North bank of the river and that they continue the line directly across the river from that point and then they ascend the bluffs along the Tennessee River to the Hangover Ridge and Stratton bald and so on that way.

R. D. 88. And you were asked some questions in your cross-examination about the Hangover putting out a spur that hung over to Slick Rock Creek and then down Slick Rock Creek?

A. The lead leading over Hangover down the creek forks along

the Tennessee River and one forks down the river to Slick Rock and the other one towards Cheoah River, but right directly opposite the fore and aft tree where the State Line comes to the Tennessee River there is no ridge leading towards the river to the South side.

R. D. 89. If Tennessee should adopt the contention—leav-
573 ing Slick Rock and down the river, would it not be your understanding as to where you understood the line crossed?

A. Please repeat your question; I don't understand what you mean.

R. D. 90. I will explain—suppose Tennessee is making the contention at times here that the line should go down the river and cross so as to come up that fork of the lead from Hangover which runs into the river at the mouth of Slick Rock, would you cross then at the spruce pine, fore and aft tree, or not?

A. No sir, would cross at the mouth of Slick Rock.

R. D. 91. You said, I believe, that since your previous examination in this case you had passed from the spruce pine, fore and aft, on the North bank of the Tennessee River, down the river to a point opposite Slick Rock?

A. Yes sir.

R. D. 92. And on that you said something about some marked trees?

A. Yes sir.

R. D. 93. How many marked trees did you find on this last trip since your previous examination bearing the State Line marks?

A. In my last trip to that country I crossed the Tennessee River from the South side to the North side at what is known as the big eddy and then I walked down the Tennessee River passing the fore and aft spruce pine tree, as it is known in this case, continuing on down to tree No. 30 shown upon the plat. I didn't follow the stream any further than tree No. 30 on this last trip and in about 150 feet up the river from tree No. 30 I found the hemlock tree marked as a State Line—very old marks—which I believe to be the original State Line marks.

R. D. 94. Is that put down on this map which you have made and which has been used in this case as your plat?

A. No sir.

R. D. 95. It is in addition to any of those put down?

A. Yes sir.

R. D. 96. What are the marks for a side line?

A. Three hacks.

R. D. 97. On which side of the tree are those marks?

574 A. On the Northeast side of the tree.

R. D. 98. And in appearance of age do they correspond with the trees which you have found on the undisputed territory as State Line trees and those which you have blocked and found to go back to 1821?

A. They had the same appearance to me.

Dec. 1, 1910, at 4:40 P. M. the further examination of D. B. Burns, by consent, was adjourned to 9:30 A. M., December 2, 1910, *to* the same place.

December 2, 1910, at 9:30 A. M., the further re-direct examination of the witness D. B. Burns, was resumed pursuant to adjournment.

Present:

(For North Carolina:) General Theo. F. Davidson, Ben Posey, Esq., F. A. Sondley, Esq.
(For Tennessee:) Charles T Cates, Jr., Attorney General of Tennessee; T. E. H. McCroskey, Esq.

D. B. Burns, resuming the stand for further examination, testified as follows:

Redirect examination continued by F. A. Sondley, Esq., on behalf of complainant:

R. D. 99. When we stopped examination on yesterday evening I was enquiring about what you found up and down the Tennessee River between where the State Line trees reached it at the fore and aft hemlock and the point opposite the mouth of Slick Rock Creek and you said, I believe, that you found a pine there that was
575 not put down on your map made an exhibit to your testimony in this case. How far was that pine below the spruce pine which is near the bank of Tennessee River in the State Line as it approaches the Tennessee?

A. About a quarter of a mile below.

R. D. 100. How far is that spruce pine or hemlock that we have spoken of as a fore and aft in the State Line as you approach the Tennessee River from the North from the river bank?

A. Why it is something like 100 feet, may be a little more or a little less. Couldn't tell exactly.

R. D. 101. Now what kind of a pine is this that you say isn't put on your map which you say is situated about a quarter of a mile below the spruce pine?

A. It is the same kind of a pine as the fore and aft hemlock I would call it. They call it spruce pine in that country.

R. D. 102. How many trees then do you know of bearing State Line marks between the fore and aft hemlock, of which you have just spoken, and the point opposite the mouth of Slick Rock Creek?

A. Two.

R. D. 103. How many did you say you knew of?

A. Two. Tree No. 30 that I blocked and the pine that we have just been speaking of.

R. D. 104. Do you know anything of any others that are put down here?

A. Just the one shown here on the map.

R. D. 105. Do you know of any others that have been testified about, or have you found others in that space?

A. That is all that I know of, all that I saw personally, but I believe I heard Mr. Chambers testify that he found some others there, but I have never seen them.

R. D. 106. Did you make any search subsequent to your previous

examination in this case for other trees between the fore and aft hemlock and the point opposite the mouth of Slick Rock Creek aside from the chestnut oak and pine?

A. I didn't search any further down than the chestnut oak tree No. 30.

576 R. D. 107. Why not?

A. It was very late in the evening when I was there and I didn't have time enough to make the search so I had to turn back.

R. D. 108. How far is the chestnut oak which you say you blocked in that space from the fore and aft spruce pine near the bank of the Tennessee River?

A. About 1,475 feet. I believe the sketch will show.

R. D. 109. About what fraction of a mile is that distance?

A. It is a little more than a quarter.

R. D. 110. When you went to that tree on the last occasion you say, I believe, that you found it blocked?

A. Yes sir.

R. D. 111. On which side was the blocking?

A. Blocked on the East side or the side up the river.

R. D. 112. What else did you find about the tree indicating blocking having been done?

A. The tree looked like it had been blocked very recently, and I found a piece of the block lying there on the ground, picked it up, and I saw, I believe, just a part of the blaze that I could see in the block. That is my recollection, and I counted the number of the growths on that block from the blaze back to the bark, and my recollection is that there was 57, indicating that the marks shown in the block was made about the year 1853.

R. D. 113. Could you tell how deep into the tree the blocking had gone that you found there?

A. Only approximately. The tree where the block had come out was haggled a little bit and it went back, I believe, 80 or 90 years, I couldn't detect exactly.

R. D. 114. Do you have any knowledge or information as to who did or procured that blocking?

A. No sir.

R. D. 115. Then you say on the other or Northeastern side, you blocked the tree—I believe?

A. Yes sir, the side down the river, the Western side I would call it.

R. D. 116. And took out a block?

577 A. Yes sir.

R. D. 117. I believe you offered that block in your recross-examination, but it was not put into evidence. Will you kindly produce it?

A. I will. Here is the block.

R. D. 118. Will you please write your name upon that block underneath the statement of what it is?

A. Put it on there in ink?

R. D. 119. Yes sir, in ink.

A. Marked on the block my name "D. B. Burns, block from tree No. 30."

R. D. 120. Will you please file that block in the case as a part of your testimony?

A. I will, and file it as Exhibit No. 11.

R. D. 121. Now will you please state whether or not you got all the blaze for the marks of 1821 as you say it will count back to on that block that you produce?

A. No sir I didn't get quite all of it. The blaze was very long. We cut out a good bit of it in the chip, cutting in the lower notch, and I could see when we cut into the tree as soon as we got into the blaze. There may be a little blaze left in the tree yet, although I am not absolutely sure.

R. D. 122. I wish you would state how you know that that is a State Line mark that you say counts back to 1821?

A. From my knowledge and investigation of the State Line marks fore and aft trees were marked with two hacks above a blaze.

R. D. 123. How is that block that you have produced there marked for that interior mark or set of marks?

A. The block shows after blocking, and into the interior of it it shows very distinctly two old hacks into the wood and quite a long blaze below. The blaze looks like there has been several strokes taken in the wood and the blaze shows very distinctly the chops of the ax and the blaze is below the hacks.

R. D. 124. Is that blaze that you have described *be* simply a hack or two hacks?

578 A. Oh, no, it shows too plainly, it is cut clear through from where the blaze starts, that it has been cut all through to the block.

R. D. 125. In what particular did you find the indication of an ax into the tree that you call a blaze?

A. I think when they struck the tree they struck it with the ax several times and struck it too deeply into the tree, looks like it was haggled.

R. D. 126. Any doubt about that being a blaze?

A. No sir, no doubt in my mind. Two hacks show above it.

R. D. 127. What do they show to indicate them to be hacks?

A. You can see the cut of the ax into the wood very distinctly yet.

R. D. 128. Is it possible for that to be a blaze?

A. Don't see any signs of a blaze where the hacks are. A little knotty place always appears over the place where the ax goes into the wood.

R. D. 129. How carefully did you count from that out to the bark?

A. I counted it two or three different times.

R. D. 130. With what result?

A. I make it 89.

R. D. 131. You have also testified that you also found some more recent marks between these marks which you found to be 89 years old and the bark?

A. Yes sir.

R. D. 132. Point out that place and describe it?

A. I found a blaze, the blaze shows distinctly in this block. I don't know whether the hacks are in it or not. The block was split again and the hacks may be in the block next to it and I counted in it 57 growths showing that it was made in 1853, and I counted also the same number of growths in the tree that was blocked on the other side.

R. D. 133. How did they tally?

A. I counted the same number of growths, 57.

R. D. 134. Is there any doubt of that being a blaze that you spoke of that counts back to 1853?

A. No doubt about it in my mind, shows very distinctly it has been cut with an ax.

R. D. 135. Do you know of any boundary of land marking
579 that ever occurred in that vicinity that could count back to 1821 or for 89 years, except the marking of the State Line?

A. No sir.

R. D. 136. Where has that block been since it has been taken from the tree by you on last Saturday?

A. It has been in my possession ever since.

R. D. 137. You spoke of having gone there, I believe, to hunt for that tree on the occasion when you blocked it?

A. Yes sir.

R. D. 138. When had you heard of that tree on any previous occasion which caused you to expect to find it or make a search for it?

A. After Mr. Gannett's search and survey, I had been informed that he had found this tree designated as tree No. 30 on the plat and the tree was platted on from his notes.

R. D. 139. Did you understand then that the tree had been blocked previous to the time it was seen by Mr. Gannett?

A. No sir.

R. D. 140. Did the blocking which you found when you first went to the tree on last Saturday indicate that it had been done long enough before that time to have been blocked when Mr. Gannett was there?

A. No sir, the blocking looked to be very recent, just a few weeks, possibly, and may be only a few days, I couldn't tell, but the cutting was very fresh, and it couldn't have been done over a few weeks.

R. D. 141. When did you understand Mr. Gannett was there?

A. He was there early in the Spring. I believe it was in May, I am not quite sure noe.

R. D. 142. Of this year, 1910?

A. Yes sir.

R. D. 143. Now coming to the matter of the approach to the Tennessee River from the North side. I understood you to say that there was a point coming down to the river on the marked State Line from which you could see the mouth of Slick Rock distinctly?

A. Yes sir.

580 R. D. 144. And from that bearing you took—I mean from that point you took a bearing of Slick Rock. Is that correct?

A. I don't remember that I took a bearing from that point.

R. D. 145. But that you thought that the map of 1821, or the

copy that you had, indicated that the surveyors took a bearing from it?

A. Yes sir.

R. D. 146. Now did you attempt to follow the line from that point to the mouth of Slick Rock that it would have required to follow such a bearing?

A. I made a thorough search through the country that that line would have gone through or that I thought it would have gone through and I didn't find any old marks, and I also made a thorough search of the ridge that leads around opposite the mouth of Slick Rock, which leaves the Smoky Mountain above this place.

R. D. 147. How difficult was the land to pass over along that line that such a bearing would have indicated to the mouth of Slick Rock?

A. There is one place in that country down next to the river where there is a very steep bluff. As I testified, when we undertook to run the bearing back from the mouth of Slick Rock on the bearing that we obtained from the original bearing of 1821 and that in chaining the line back we couldn't follow the course directly but had to go around some of these bluffs.

R. D. 148. Now what is the course or running of the ridge that you spoke of that goes from some point on the North side down to and opposite the mouth of Slick Rock? How nearly is it on the line that that bearing would have indicated, if taken?

A. That bearing comes pretty close to where that ridge turns off is my recollection, that is using the bearing that is shown on the plat. The ridge turns off a little higher up where you can see the mouth of Slick Rock where they actually marked the State Line and you can see the mouth of Slick Rock Creek from this other ridge which runs above and in fact the ridge after it gets to the mouth of Slick Rock, really I would not call it a ridge, kind of a rocky bluff from down there to the river. The bluff is not so very
581 steep that you can't descend, but very bad to go down.

R. D. 149. How near does that ridge run down as indicated by such a bearing as you think the surveyors of 1821 took?

A. It conforms for a piece at least nearer to the one than they actually took and possibly for a half mile before you get to the river it bears *to* too much to the left and possibly as much as the other to the right, the bearing that they show.

R. D. 150. As I understand you that would swing around somewhat to the West, is that the idea?

A. Yes sir and the line that they cited or platted on their map would be just about a compromise between the line that they actually marked on the ground and the other ridge that runs around to the right is my recollection. I haven't been there but the one time when I made the survey and I didn't survey the other ridge only just a part of the way.

R. D. 151. When you crossed the river then and found yourself at the mouth of Slick Rock Creek, how nearly did you think yourself on the line indicated by the copy of the map of 1821?

A. From my previous investigation I had reached the conclusion

that the stream marked "creek" upon the plat where the State Line crosses the Tennessee River was Slick Rock Creek and when I got at the mouth of Slick Rock Creek I believed myself to be on the line as run by them in 1821.

R. D. 152. How near did that copy of the map of 1821 put the stream marked "creek" to the State Line at that point?

A. It seemed to be right at the mouth of the creek. It seemed, in fact the impression it left to me was that they intended the line to be right along the creek.

R. D. 153. Did you find the various copies as certified for the map of 1821 which you have seen to exactly correspond as to proximity of that creek to the State Line for some little distance up it, or do they vary in that particular somewhat?

A. I have seen several of the certified copies. There seemed to be some variation between them. Suppose it is due to the tracing off.

582 R. D. 154. Now those that diverge most from it was apparently made how, those copies, by hand or by photograph?

A. By hand.

R. D. 155. Well those that proximated very closely to the stream was made how?

A. I have seen a photograph of the original map and the stream thereon and the line seemed to be right together.

R. D. 156. Interpreting that map of 1821 according to your knowledge and experience in the matter of topography, how would you say that that line had been located in regard to that stream marked "creek" up it, or diverged from it?

A. Up it. I don't think they attempted to diverge from it at all.

R. D. 157. What then would be your explanation of the fact that at places the line was marked off the stream as it went up it from the mouth?

A. As a matter of fact there was no tree standing in the stream and if they marked a line at all they would have to mark a tree standing on the bank. Some of them are on one bank of the stream and some on the other bank. That would indicate to my mind that they intended the stream to be the line.

R. D. 158. Now you say as you went up that stream you found at two places old marks which you did not take to be State Line marks. Please tell us first where those old marks were?

A. Upon the large map which has been filed as Exhibit "D" to my deposition there is a broken line leaving the State Line as run by me about two miles above the mouth of Slick Rock Creek and it runs up over the Stiff Knee and Little Fodder Stack.

R. D. 159. Taking what course?

A. Taking a Northwest course, and the first line which starts at the creek at Slick Rock Creek on the line just mentioned is a line of a little more than a half a mile in length, and it was along that line that I found old marks.

R. D. 160. You say you blocked those old marks, I believe. What did you find their age to be?

583 A. My recollection is that they would be 73 years old, and they was blocked two years ago. I know they were blocked two years ago, when we blocked them.

R. D. 161. How would that compare with the State Line marks that you say you found which were found around in that space of the creek?

A. 13 or 14 years too young.

R. D. 162. Which was the next of those marks putting off from Slick Rock Creek above the one that you have just mentioned as 73 years old two years ago?

A. The next one that we blocked was not far from the mouth of Little Slick Rock Creek. I didn't run that line, but I found some old marks on it and I blocked some of them, and my recollection it counted the same as that other line just mentioned.

R. D. 163. That is the other line that went off to the Northwest?

A. Yes sir, 73 years.

R. D. 164. Have you any knowledge of any other survey having been made in there subsequent to the year 1821 that would have run off in that way or approximately so?

A. I know very little about the lands in that country. I was told, I believe, by Mr. Denton, that that land had been sectionized in there at one time and I thought they was just old section lines.

R. D. 165. By whom had that sectionizing been done?

A. I don't know.

R. D. 166. Had you heard of the late sectionizing said to have been done by the State of Tennessee?

A. Yes sir, I had heard of it.

R. D. 167. Did these lines that you found putting off bearing the age of 73 years conflict in any way with the lines running up Slick Rock and the marks that you found on it?

A. No sir.

R. D. 168. You said something, I believe, about pointers to corners somewhere. Was that on Slick Rock Creek, or elsewhere that you found corners that had marks on them as probably land corners?

584 A. Well those old surveyors when they would set up a land corner would almost always mark several pointers to them and I believe there are some of them on Slick Rock Creek. I don't remember now. I know there are some old land corners on Slick Rock. I believe there are also some old pointers.

R. D. 169. Whatever these marks may indicate, what is the danger of confusion of the State Line with a pointer in the matter of the marks in the trees?

A. A pointer is marked with two hacks above the blaze facing the corner tree that it is a witness of and it is only marked on the side facing the corner, while the State Line fore and aft trees are marked with two hacks above the blaze on two sides of the tree, the side in which the line approaches and in which it leaves.

R. D. 170. Is any other State Line tree marked with two hacks above a blaze except a fore and aft or center line tree?

A. No sir, I have never seen any that I know of.

R. D. 171. The side lines are marked how?

A. With three hacks.

R. D. 172. Now what would be the possibility of the confusion of a pointer with State Line trees?

A. Not very apt to be any unless there would be some trees, one side of them which are well preserved and protected from the weather and the other side is sometimes weathered off and sheds off the marks, and if a State Line tree had been marked as a fore and aft tree it would be possible for one side to show and the other not. That is not often the case however. If it had been marked as a fore and aft you could find some marks on each side.

R. D. 173. Did you have regard in making your investigation up Slick Rock Creek of how State Line trees were marked?

A. Yes sir I knew how the State Line was marked.

R. D. 174. Could any of those trees that you referred to have been pointers to a land corner?

585 A. No sir. I think every tree as shown on this map, at least every one that is tied in by me is State Line trees. There is some additional ones that were tied in by Mr. Gannett. Every one that I tied in I believe them to be State Line trees.

R. D. 175. You stated about some blocking at one time by Gannett at which you were not present at the blocking?

A. Yes sir.

R. D. 176. And in reply to a question by the Attorney General for Tennessee you said you knew nothing about it except what Mr. Denton told you.

A. The tree that you have reference to is block No. 3 and Mr. Denton had been in that country a few months before and had made a survey up Slick Rock Creek for about a mile and a quarter and he had found a number of State Line trees in that distance, and this particular tree designated as block No. 3 was a tree that he had blocked on his investigation prior to the time that I was in there with him and my recollection of the tree when I was there that it was down—think it was broken off at the place that it had been blocked, and he told me that he had blocked the marks out of the tree and he afterwards showed me the block that had been taken out and that was filed in the case two years ago at Knoxville as block No. 3.

Gen. CATES: State of Tennessee objects to the statement by the witness of the declarations made to him by a man by the name of Denton, it being hearsay and incompetent.

R. D. 177. Did you count the block?

A. Yes sir, I attempted to count the block. It was very fine growths and it was very hard to count. I used a magnifying glass on it. I was satisfied that it was the original State Line mark. I don't remember whether I counted or could count exactly the correct number of growths or not. Sometimes I would get a little more and sometimes a little less, but I am thoroughly satisfied that it was a State Line mark.

R. D. 178. State whether or not this is the same Denton that you testified about showing you this block in your re-cross-examination.

A. Yes sir.

586 R. D. 179. How did that block appear when you saw it in comparison with the tree that it purported to have come from?

A. It was a water birch is my recollection and had the bark on it. That is the block had the bark on it, and there was no doubt in my mind that it come out of the tree that he showed me that he had taken it out of.

R. D. 180. Considerable enquiry was made of you in your cross-examination about the altitude of various peaks in the vicinity of Big Fodder Stack and Hangover. What is the highest of all the peaks in that neighborhood?

A. Huckleberry Knob.

R. D. 181. How high is it as shown by the geographic maps issued by the United States Government?

A. I think it is over 5,500 feet.

R. D. 182. Will you please mark upon it the altitude as shown by those maps where you put the other marks?

A. I have done so, shown Huckleberry Knob on this map. Huckleberry Knob comes off between Laurel Top and Hall Knob and over into the Santeetlah country. There is a mountain leading back there passing over Hoopers Bald, Hangover Knob, Big Huckleberry Knob and Little Huckleberry Knob. Big Huckleberry Knob is the highest peak in that country as shown by the government sheets.

R. D. 183. What is the next highest peak in that country according to the topographical maps issued by the government?

A. I believe that it is Hoopers Bald.

R. D. 184. What is its altitude as shown by those maps?

A. It shows 5,500—(plus).

R. D. 185. How could you approximate those, if not correctly, upon your map, do you think, those two points?

A. I have surveys in surveying various lands in Graham County from which I could put on Huckleberry Knob.

R. D. 186. I wish you would put on Huckleberry Knob by such marks as you have put them on when requested by the Attorney General for Tennessee?

A. Yes sir. They are in Asheville.

587 R. D. 187. But you will hereafter put them on according to the true surveys as made by you?

A. Yes sir.

R. D. 188. And give the altitude as shown by the government topographical maps?

A. Yes sir.

R. D. 189. Does the State Line run either over Huckleberry Knob or Hoopers Bald?

A. No sir.

R. D. 190. How far does it run from it?

A. I ought to know, but it has slipped my mind. I believe about two miles from Hoopers Bald, but may be not quite so far.

R. D. 191. How far is Kuckleberry Knob from the State Line?

A. Huckleberry Knob is about a half mile, or about three-quarters of a mile, possibly a little farther.

R. D. 192. Now when you give the distances of Huckleberry Knob and Hoopers Bald from the State Line, do you mean a portion of the State Line that is in dispute, or the portion that is not controverted?

A. The portion that is not in dispute.

R. D. 193. I see a point on your map marked "County Corners," in regard to which you were cross-examined upon your re-cross-examination on yesterday?

A. Yes sir.

R. D. 194. Why it is called "County Corners"?

A. Well from the fact that it is recognized, at least by people in the country near that place by everybody, that knows those mountains, that there is three counties that corner there—Cherokee County, N. C. and Graham, N. C. and Monroe County, Tenn.

R. D. 195. How general is that location and aphorism for that point?

A. So far as I know it is general. I have not been in that country very often. Everybody that I ever talked to called it "County Corners": seemed to be a very familiar name in that country.

R. D. 196. Suppose the State Line between North Carolina and Tennessee were to be located in Tennessee where would the "County Corners" be?

A. There would be no "County Corners" at all. It would
588 be Monroe County Tenn. and Graham, N. C.

R. D. 197. Suppose the State Line were located as claimed by Tennessee at that point or in that vicinity, in what State would that "County Corners" be?

A. As I understand it it would be a point on the State Line if that would be the case.

R. D. 198. Would Cherokee County corner there?

A. It would touch the counties of Monroe County, Tenn. and of Graham, N. C. and it would be a State Line corner as well if the contention of Tennessee were correct.

R. D. 199. Is there any dispute about the location of the point called "County Corners"?

A. No sir, none that I ever heard of.

R. D. 200. Do you know anything about how the line dividing Graham and Cherokee counties has been located and has been recognized in that neighborhood in regard to "County Corners"?

A. Yes sir, "County Corners" is a point on the State Line, and it is also where the ridge comes up to State Ridge that divides the water sheds of Tellico and Snow Bird.

R. D. 201. How is it treated by Cherokee and Graham counties?

A. It has always been recognized as the corner of Cherokee and Graham—has always been—that is my understanding.

R. D. 202. Now you said, I believe, that the topographical maps

issued by the government were not correct in relation to Jenks Ridge location near the waters and on the waters of Tellico River?

A. Yes, sir, I made that statement.

R. D. 203. Is your map which you introduced in evidence a correct location of that ridge or not in so far as it shows where the State Line goes, according to the North Carolina contention?

A. Yes sir.

R. D. 204. How do you know that Jenks Ridge runs as you have laid it down there?

589 A. I made a careful survey of Jenks Ridge and the State Ridge and then I also made a survey of the Tennessee contention—Jenks Knob over McDaniel Bald and around to "County Corners." It gave me a closed circle and enabled me to calculate it and there is no error in the closed circle. I found it very very close and there was no error and the line as run down Jenks Ridge and the State Ridge gave me a check on my work.

R. D. 205. How nearly true is the location which you have put on your plat for Jenks Ridge and State Ridge according to the survey you made of them?

A. They are as nearly exact as I could get them. Of course there is some spurs running down from each ridge that I do not show on the plat. I followed the main State Ridge and up Tellico, called the main fork of Jenks Ridge I believe it is, only very short, it reaches the main point of Jenks Ridge and up Jenks Knob.

R. D. 206. Do you know how these topographical sheets were made in locating ridges in Western North Carolina and Eastern Tennessee?

A. All that I know about them has been in conversations with men who have worked upon topographical work. My brother followed that a number of years, and I talked with him, and I also talked frequently with Mr. Gannett when he was making the survey, about their methods of topographical work, and my understanding is that they are located with a great degree of accuracy. Some of the highest peaks are put on by triangulation and a triangulation station is placed upon those and other high peaks in between them. They would use different methods—on some what is called plain table work and other triangulation work not so accurate as what is called their triangulation stations, and these minor little ridges were sketched in just as accurate as they could get at from the rough methods they used. They don't purport to be absolutely correct, because the expense of getting a map that would show every little detail and stream correctly would be greater than the Government could justify it.

R. D. 207. Now do you know how they generally get these minor ridges as to their location and direction—whether by the use of actual instruments upon the land, or by looking from some point on the mountains near, or some other method?

590 A. Well I think the minor ridges was just a matter of looking at them. They would generally run a line or levels up the main water courses and the main ridges and they would paint up the elevations on rocks and trees that they could find to paint it upon, and the parties that were sketching in the topography of the

country would also use those as their guide and would also use barometers to get a part of their elevations, and that was the method I believe that was adopted—to sketch in the minor ridges.

Gen. CATES: The State of Tennessee objects to the last two or three answers of the witness in attempting to detail conversations between himself and Gannett and between himself and his brother and others who may or may not have been connected with the United States topographical survey, and the State of Tennessee also objects to the witness' ideas and inference drawn as to the methods of making the topographical survey, inasmuch as he was not present and knows nothing about it personally.

R. D. 208. What have you found to be the fact in regard to such of these minor ridges as you have had occasion to examine—whether or not they are accurately located on those topographic sheets as to direction and length?

A. Well I find a great many of them that are about right, and I find others that are considerably off, both in distance and in length.

R. D. 209. Now what is the scale on which the map of 1821 purports to have been made?

A. 800 poles to the inch. 13,200 feet.

R. D. 210. How nearly would it be possible on such a scale as that to indicate every bend in the ridges over which the line passed or any stream up which it might go?

A. It would be impossible.

R. D. 211. Why not?

A. 1.100 of an inch would represent a distance of 132 feet upon a scale of that size, and it would be impossible to show the exact widths of streams under that distance at least, because a line
591 only 1.100 of an inch in width would be very fine and difficult to see on a scale of that size.

R. D. 212. That then, as I understand you, necessitated you in taking greater distance for ridges or streams by continuing two or three turns into one turn or average direction?

A. Yes, sir.

R. D. 213. Now would a test according to those principles be a fair one of the character of the map of 1821?

A. Yes, sir.

R. D. 214. What then would be a fair method of using a plat constructed upon the scale as you have mentioned the map of 1821 was constructed?

A. You mean for the purpose of following a line?

R. D. 215. Yes, sir.

A. The general course would be sufficient to enable you to follow the marked lines, especially in the case of the map of 1821, inasmuch as they show that they followed ridges and water courses.

R. D. 216. Was it possible to construct within a reasonable space a map that could be interpreted, or should be interpreted in any other way, in order to file it in as small a scale as that of 1821 appears to be?

A. I don't think so.

R. D. 217. Now you say you have been over the line that Tennessee claims would run up Hangover passing along that territory, as you go from the Tennessee River to Hangover in the Summer time, which stream can you see the best from there of any stream in that country?

A. Well, you have got a good view of Slick Rock on your right, also got a good view of Yellow Hammer, Barkers Creek, Bear Creek, Deep Creek, and from the Hayoe and along the ridge from the Hayoe to the Junction along the Tennessee contention you get an excellent view of Santeetlah and its tributaries, and I believe you can see the Cheoah River from a few places.

R. D. 218. From what part of that country up the Tennessee River up to Hangover and the Junction would you get good views of Slick Rock Creek?

592 A. Well you can see the Slick Rock country from any of the little rises along the ridges.

R. D. 219. From what points when the leaves are on the trees, would you be able to see the country over toward Santeetlah and Deep Creek and those other streams you have mentioned as lying to the East, I believe, of Hangover?

A. I don't understand at what point I am to be to get these views.

R. D. 220. At what point would you have to be to get these views in going up Hangover?

A. From the Hangover beyond you can see Bear Creek and Barkers Creek and Deep Creek. I think you can see Deep Creek from the Hangover, you can from the Hayoe, and you can also see the Santeetlah country from the Hayoe and all along the ridge from Hayoe to the junction.

R. D. 221. What views could you get of these streams to the East of Hangover as you went from the Tennessee River up to Hangover. Can you get as good views of them as from Slick Rock?

A. Yes, sir.

R. D. 222. Now what size stream is the Cheoah river as to length?

A. Well, Cheoah river is a large stream, and it is about 20 miles in length from its mouth to Robbinsville; after reaching where I believe Long Creek comes into it—it is not Long Creek, possibly Mountain Creek—at any rate at a point near Robbinsville it is not called Cheoah River any longer, the main prong is Talula.

R. D. 223. Now, what is its length with its main tributaries considered in running from the ones that constitute its headwaters down to its mouth?

A. What I intended to say it is 20 miles in length to what is called Cheoah River and Talula is the main prong thereof and from my knowledge of the country I would say it is about the same length and Big Snow Bird is the next longest tributary and I have surveyed from the head of Snow Bird to the mouth and Snow Bird itself is between 20 and 25 miles in length, and I forget there is another tributary Santeetlah, possibly as large as Snow Bird and it possibly drains as much country and then there is East

593 Buffalo and West Buffalo, good size streams, Yellow Hammer Creek and Mountain Creek good size streams, Bear Creek, Barkers Creek and Deep Creek other tributaries, in fact it

drains the larger part of Graham County, N. C. Very large stream with all its tributaries.

R. D. 224. So that from the headwaters of Cheoah to its mouth would vary from 40 to 45 miles in distance?

A. Yes, sir.

R. D. 225. How long a stream is Citico Creek?

A. I know very little about Citico. Never have been around the headwaters of it on the State Line.

R. D. 226. Do you know where its mouth is?

A. Well it comes into the Tennessee River some distance below the Tellassee water is my recollection. I have been to the mouth of it.

R. D. 227. Approximately, how long is it, if you can tell us?

A. I would think it would be about 30 or 35 miles long.

R. D. 228. What is the stream, if you know, shown on the copy of the map of 1821 on the South side of the Tennessee River emptying into that river between the mouth of Citico and the State Line emptying just above the mouth of Abrams Creek?

A I take it to be Telassee Creek.

R. D. 229. How near does it fit to Telassee?

A. Pretty close. Might be a little closer to Abrams Creek than it really is. Telassee Creek is about four miles above.

R. D. 230. At the end of the trail leading to Telassee?

A. Yes, sir.

R. D. 231. Where does that trail end?

A. On the map it ends at this little stream.

R. D. 232. How near does Telassee run into the Tennessee River at Telassee?

A. Just a little ways above.

R. D. 233. How far above?

A. Possibly about a half mile above Telassee Ford. Telassee Creek comes into the Tennessee River about one-half mile above Telassee.

594 R. D. 234. Any other stream that enters the Tennessee River at or above Telassee?

A. No other stream that is as large as that.

R. D. 235. Is there another stream that enters into the Tennessee near Telassee Creek?

A. Another creek called First Creek that enters into the Tennessee near Telassee Creek.

R. D. 236. Do you know how long Telassee Creek is?

A. No, sir, I don't, I would say 7 or 8 miles at a guess.

R. D. 237. I see the headwaters of a creek up about here—is that where the State Line crosses the mouth of the Tennessee River which appears to be the headwaters of Citico Creek? You notice that on the copy of the map of 1821?

A. Yes, sir.

R. D. 238. What stream does have its head on the East opposite or just opposite the head of Citico Creek?

A. Slick Rock Creek.

R. D. 239. Where would the head of Cheoah be in relation to the head of Citico Creek? ?

A. It would be considerably farther South, very much farther.

Recross-examination by General CATES on behalf of the defendant, State of Tennessee:

Q. 668. Mr. Burns, you have stated in your last re-examination that there have been some imperfections in every map, of rather copy of the map of 1821 which you have seen?

A. Yes, sir.

Q. 669. And I believe the only imperfection in the copy exhibited with only Williams' deposition as Exhibit "A" thereto, is what?

A. The principal variation I see in this was his trail.

Q. 670. I don't mean in this, but I am talking about this particular copy?

A. This particular copy filed with Williams' deposition
595 shows path to the Valley Towns coming to the State Line.

Q. 671. And doesn't show where it leaves it on the North Carolina side?

A. That is it.

Q. 672. Will you point out to me anything in the report of the commissioners which calls for that path as being a part of the line?

A. I think the report of the commissioners called to come to that trail at a certain number of miles.

Q. 673. Is there any call in that report as to where it leaves the trail?

A. I am not positive as to that now, but it seems to me that there was, but I am not positive, but I am pretty clear of the fact that it calls to come to the trail at a certain number of miles, but I am not positive that it calls to leave it at a certain number of miles.

Q. 674. I read you from the commissioners report as follows:

"from Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called the Unicoy, or Unaka Mountain, striking the old trading path leading from the Valley Towns to the Overhill Towns, near the head of the West fork of Tellico River."

Now is there anything in that to indicate that the path to the Valley Towns runs along the line for any particular distance?

A. Read it a little bit farther.

Q. 675. All right, I will read it over to you again: "from Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called the Unicoy, or Unaka Mountain, striking the old trading path leading from the Valley Towns to the Overhill Towns, near the head of the West fork of Tellico River, and at the distance of ninety-three miles from the beginning, thence along the extreme height of the Unicoy or Unaka Mountain to the Southwest end thereof, at the Unicoy or Unaka Turnpike road, where a corner stone is set up marked Ten. on the West side and N. C. on the East side, and where a hickory tree is also marked on the South side Ten. 101 M. and on the North side N. C. 101 M. being one hundred and one miles from the beginning."

596 Now is there any reference in that report to this path, except at one place?

A. No, sir, but that one place is the visible place and it calls to come to that trail at 93 miles and where the trail leaves as shown on the other copy comes to that trail about the 93rd mile as spoken of.

Q. 676. You mean it comes to the State Line at the 93rd mile—on which side of the line?

A. The trail on the copy that I saw comes down in this direction, the trail comes across and strikes the State Line and seems to come down in this direction and coming around the way they run the State Line it makes the 93rd mile in the direction that the commissioners run the line Southwest.

Q. 677. Is that the only imperfection in this copy?

A. That is the only serious one I saw. Of course it is impossible to get an exact copy when you trace.

Q. 678. Now how many copies have you seen?

A. I saw the one that I filed as Exhibit "A" to my deposition in the suit two years ago. I have seen this one here filed to Williams' deposition and I have seen a photograph of the original.

Q. 679. Haven't you got also a trace copy filed as an exhibit to your original examination?

A. I had a blue print of the tracing that I filed with my deposition.

Q. 680. Where is it?

A. It isn't here. Mr. Gannett filed it or I did. I believe it is at Asheville.

Q. 681. Who has charge of all these exhibits to your original examination? Did you carry them with you?

A. No, sir.

Q. 682. Who has charge of the photographic copy and this big map, Exhibit "D" to your original examination?

A. Those were all given—I don't recall the man's name now—some Clerk at Asheville, and they went from him, I believe, to the stenographer and the stenographer that took the deposition
597 gave them to me. I have been keeping them in my office. I brought them over here at your request.

Q. 683. Now you didn't bring them, did you?

A. I am mistaken about bringing them, but I left them wrapped up on my drafting table ready to be sent.

Q. 684. So they are not in fact in charge of the commissioners who took the proof for North Carolina?

A. I told you how the fact was.

Q. 685. So that they are in your custody and not in the commissioners' custody?

A. They were given to me to keep and I preserved them.

Q. 686. Now Mr. Burns you know that your employer—Mr. Cozad or Mr. Hopkins—or both of them have seen what purports to be the original map of 1821 in the hands of the State Archivist at Nashville, don't you?

A. I believe Mr. Hopkins said that he has seen it, but I don't believe I ever heard Mr. Cozad say he had seen it.

Q. 687. Did you ever go to Nashville to see it?

A. No, sir.

Q. 688. Do you know of any refusal upon the part of any Tennessee authority to allow any one connected with your side of the case to see this map at will?

A. I don't believe I know anything about that.

Q. 689. Now I lay before you, having received here in your presence from Mr. Robert T. Quarles, State Archivist of the State of Tennessee, what purports to be the original map of 1821 and call your attention to it. Exhibit "A" to the deposition of Onley Williams is a fairly good copy of that map, isn't it?

Mr. SONDLEY: The State of North Carolina objects to any enquiries as to the map of 1821 until it is introduced in evidence in the case.

Gen. CATES: Notice has been given by the State of North Carolina to produce this map on the hearing before the Supreme
598 Court of the United States, and Tennessee accepts that notice and will produce that map and deems it proper now to submit the original in the custody of the State Archivist present to the witness Burns for his examination and for examination thereon.

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

Q. 690. Now Mr. Burns you have testified that what purports to be a photographic copy of the map of 1821 and which you have introduced in evidence, or has been introduced for the State of North Carolina, shows that this map has been broken in two, did you not?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be presented on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. Yes, sir.

Q. 691. I will ask you to examine this map, and state if it doesn't appear to have been originally made upon three separate pieces of paper pasted together?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

599 A. It shows that it has been pasted together, that it has been in three different pieces and pasted together.

Q. 692. Now then where the folds are, as they appear there and as appear the heavy dark lines on the photographic copy is simply where the map has been platted, isn't it?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. Well the place where the map has been platted show- on the photograph. I think the plat shows distinctly where it has been pasted together as well.

Q. 693. The map of 1821 hand made or photograph copy?

A. Hand made.

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

Q. 694. And now I will ask you to examine all the places on the original map, not only where the sheets were pasted together but also at the folds and ask you to state if there is any break whatsoever or disjointing whatsoever of the State Line at any of those places?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already,
600 and will object to all evidence regarding it.

A. The dotted line which is marked "Unicoy Turnpike Road" seems to be a kind of a slip in the jointing at that point and the way the State Line is put together and the way the State Line is represented by the different coloring used it is hard to detect whether there has been any slip in the jointing or not.

Q. 695. Now Mr. Burns, I put my pencil at the place where the first fold and the right hand of the map crosses the State Line above the headwaters of Tellico and ask you if it isn't a fact that there isn't a particle of disjointing in that line at that place.

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. I don't detect any.

Q. 696. Isn't it a fact that the original paper at that place and which is not at the point where the two sheets have been pasted together have not been broken through?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. It looks like the original paper at that point to me.

Q. 697. Now I put my pencil at the point just Southwest of there where the two sheets seem to have been pasted together and there is no disjointing there, is there?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case
601 and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. The red shading shows like there might be a little disjointing. As I said it is hard to detect from the coloring placed upon it.

Q. 698. Now then I come up here to left hand of the map and call your atttention to the point where the first or left hand sheet is pasted on to the middle sheet and where the State Line crosses it, and I want to ask you if it isn't a fact that there is absolutely no disjointing of the State Line there?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. I see at that place mentioned a mile circle on each side of the joint.

Q. 699. Then answer my question—is there any disjointing there?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. I would like to explain.

Q. 700. Answer my question and then explain?

602 Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. What do you mean by the term "disjointing" at that particular place?

Q. 701. Doesn't the coloring and marking of the line fit there on both sides of those sheets, on the first sheet and the middle sheet—don't they join there perfectly?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. The coloring seems to join fairly well, but I don't think it has properly been pasted together because there is a mile circle on each side of the joint, one being on one sheet and the other being on the other sheet.

Q. 702. You don't mean to say that those sheets were pasted there together by Mr. Quarles, do you?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. Wait until I get done with my answer please. I believe that the original map was platted on three different sheets and at this joint to which reference has just been made about the mile circle on both sides was intended for the same mile circle, and I believe that the joining of the map is in error to the extent that one circle should be pasted upon top of the other circle.

603 Q. 703. That is based upon your guess or assumption that this map was made separately and upon three separate sheets of paper and those three separate sheets of paper joined together, isn't it?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. Yes sir.

Q. 704. Isn't it the most natural and reasonable way for an engineer or surveyor who was going to make a map of that length to first prepare the paper necessary for the length of his map?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the

United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. Depends altogether on the nature of his line.

Q. 705. Wouldn't you have done it?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. I have had a great deal of experience in surveying lines of considerable length in railroad work and it is an impossibility to get one sheet of paper that will contain all of the lines in a great many instances and it is necessary to make the line on several different sheets of paper and the place where the map is broken or the place where it starts on to another sheet it has always been my custom and in fact the instructions of the Railroad Com-
604 pany which I was working for to show a lapse for a certain distance.

Q. 706. I don't care what the railroad companies instructed you to do. I want you to answer my question—if you were going to prepare a map on a piece of paper a little over three feet long, wouldn't you have prepared your paper first before you began to trace your map on it?

A. Yes sir, at this day and time I would.

Q. 707. If you had the paper there as they seemed to have had it, you would have done that very thing then, wouldn't you?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. I don't know what knowledge those commissioners had of engineering work. My method would be to traverse the line from one end to the other, and I would figure the piece of paper the size of the whole line.

Q. 708. We will assume that they did traverse the line before they made the map and that they had the size of paper and that they knew what size paper they wanted?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. I don't believe from the time that they did the work in that

they traversed the line—I think the line was traversed with a scale and a protractor.

Q. 709. But they knew they were going to plat a line from Big Pigeon River to Georgia and they did fix the scale of their map?

Mr. SONDLEY: The State of North Carolina objects to any
605 examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. Yes sir.

Q. 710. Wouldn't it be the natural thing for them to do to get paper to run that line on before they commenced?

A. Yes sir, that is what I would have done if I could have obtained it.

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

Q. 711. And it seems that they procured enough paper to make a line that long?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821, until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. If they could not get a paper of sufficient length they would have to resort to another thing.

Q. 712. Is there any evidence that more than one hand worked on this map?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

606 A. It looks like the same draftsman did it all to me.

Q. 713. At this place where the left sheet and middle sheet joined together where the State Line crosses, there are two distinct circles on each side of that line or jointing?

Mr. SONDLEY: The State of North Caroline objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United

States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. Yes sir.

Q. 714. So that to account for those two circles being placed so close together you are driven to fall upon the idea that the sheets must have been traced separately and then stuck together and part of the line squeezed out?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. No sir not part of the line squeezed out. They got them too far apart and made them too long. One circle ought to fit upon the other circle and they are not made to fit the two.

Q. 715. Could not the draftsman have seen that he was making two circles?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

607 A. The same circle was intended to be made, or two circles.

Q. 716. And the draftsman couldn't see that he was leaving a place there for two mile circles?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. The whole matter was done in a hurry.

Q. 717. Not such work as you would have done, Mr. Burns?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. We could not have supposed that they would have gone to such great pains as to cover up such a thing as that. It shows upon the face of the thing that there is no mile between the two circles.

Q. 718. It shows upon the face of the whole thing that they did it in a very great hurry?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. Yes sir.

Q. 719. And I want to call your attention to other folds upon this map from the Big Pigeon River to the State Line of Georgia, and I will ask you if it is not a fact that there is no point at any place along that line at which the paper is broken through on this original map?

608

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. I don't detect any place where the original paper is broken through on the part which contains the line itself.

Q. 720. So there couldn't have been any slipping or sliding of the different pieces of the paper after this line was laid down on it, could there?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. Well I don't know about that. This seam which you designated the right hand joint, I believe you called it, might have been. It was kinder twisted a little bit and the fact that I can't detect very much error in the joint of the line itself and the dotted line which I spoke of which was marked the "Unicoy Turnpike Road", it seems that it don't join very closely. It would seem that it was kinder turned in that direction.

Q. 721. What you mean by your answer is that this little mark on the left hand side is a small bit higher up on the map than the first little mark on the right hand of the seam?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produce it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

609

A. Yes sir.

Q. 722. Look over here further Northeasterly along that same territory and where there is no question about joining together of

sheets and isn't there about the same difference between this mark upon which I put my pencil and this one over here except that the one to the right is about as much correspondingly higher on the map as the one on the left as this one here is on the right showing that some one just took a pen and marked lines through there from the Tennessee River to the Unicoy Mountain?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. To the eye there is not near as much difference about the first two marks that you spoke of in the question, seem to run up very much closer than the line that they join. Looks like there has been a slip the way it looks to me.

Q. 723. Now Mr. Burns you said looking at the photographic copy of the map which is in evidence for North Carolina and noting where the headwaters of Citico Creek appeared there, I believe that you said right opposite the waters of Citico Creek, as shown on that photographic copy, was Slick Rock Creek, didn't you?

A. I answered that question with reference to my knowledge of it as it was in the country, not with reference to the map. I stated in my answer to the question that I knew very little about Citico Creek. I do know that the headwaters of some of the prongs of Citico Creek head up next to the ridge between Big Fodder Stack and the Junction, and right on the opposite side of the mountain is Citico and some prongs of Citico Creek head up about the Junction.

610 Q. 724. Looking to your map, Exhibit "D", as you have actually located Slick Rock Creek on the ground, the junction point is not between the headwaters of Citico and the headwaters of Slick Rock, is it?

A. I don't show Citico on my map at all.

Q. 725. But certainly Stratton Bald as shown on your map isn't between the headwaters of Slick Rock and the headwaters of Slick Rock, is it?

A. No sir.

Q. 726. Nor is Hangover between the headwaters of Slick Rock and the headwaters of Slick Rock, is it?

A. No sir.

Q. 727. Now on this copy of the map of 1821, Exhibit "A" to Onley Williams' deposition upon which you have located Stratton Bald, Hangover and Cold Spring Knob and other points on the Hangover Ridge leading down to the river. Now also examine the original map here before you and I will ask you to state if the way you locate these things—Cold Spring Knob, Hangover and Stratton Bald, as they appear upon this map of 1821 would not all be between Slick Rock Creek and the headwaters of Citico, assuming that this stream which runs into the river down here at the line to be Slick Rock Creek?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. That is the way it appears, the way I have located them on the plat of 1821 and Slick Rock, as I stated in my testimony, if that is Slick Rock it is sketched wrong.

Q. 728. Now Mr. Burns, look at this map of 1821 and according to the scale of it I want you to tell me how far Hangover and Stratton Bald are from this thing marked a "creek" which you say is Slick Rock it is sketched in wrong.

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produce it, or until it is introduced as evidence in the case
611 and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. Hangover, the way I have located it on my map filed to Onley Williams' deposition, seems to be about a mile from the stream called "creek".

Q. 729. What about Stratton Bald?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. Stratton Bald looks to be about two miles or more distant.

Q. 730. From the stream indicated a "creek"?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence and will object to all evidence regarding it.

A. Yes sir.

Q. 731. How far from Cold Spring Knob?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. A little less than a mile.

Q. 732. And all of those points are Southwest of the stream that is marked a "creek" here on this map of 1821, aren't they?

612 Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. Yes sir, almost due West.

Q. 733. Now then you said the course of the stream marked "creek" on the map of 1821 corresponds very closely to the creek as it actually is upon the ground according to your survey. That is what you said, didn't you?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. Yes sir.

Q. 734. Now look at this original map and tell me what direction it is from the river to the first decided turn in the stream marked "creek"—a little less than a mile isn't it?

Mr. SONDLEY: The State of North Carolina objects to any examination made fro mthat map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. I have been calling it about a mile and a quarter.

Q. 735. Now what is the general direction of that first mile and a quarter?

613 Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. Southwest.

Q. 736. But as you run that creek upon the ground it extends more than 5 miles Southwest?

A. Yes sir, that is the difference that I spoke about. On the ground it runs about 5 miles Southwest and they only show about a mile Southwest and the general course after they make the turn is the general course of the creek on the ground to-day.

Q. 737. And then after that decided turn, this stream marked "creek" on the map of 1821 runs decidedly to the Southeast?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee

produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. Of course the stream is almost North and South after it makes that bend.

Q. 738. And then is almost at right angles from the lower part to the bend about?

A. Lacks a good deal of being right angles. I don't believe the angle is over 30 or 40 degrees.

Q. 739. And how far up or down South to the head of the stream as indicated on the map from that turn?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the
614 United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. I don't have the scale. I would say possibly 8 or 10 miles.

Q. 740. And passing right through the Slick Rock Ridge or lead at a place some 1600 or 1700 feet high, assuming this creek to be Slick Rock, doesn't it?

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

A. Assuming that to be Slick Rock it would cross the Tennessee contention up the lead leading up to Hangover.

Q. 741. At a place where it is some 1600 or 1700 feet high?

A. Some 1600 or 1700 feet above sea level.

Q. 742. And some 600 or 700 feet above the river and the creek down here at the mouth—isn't that right?

A. About 500 feet.

Q. 743. In any other words, it would run over a knob some 500 or 600 feet high?

Mr. SONDLEY: The State of North Carolina objects to going over the same matter as on the former cross-examination of the witness.

A. Of course taking the sketch of the creek from the map of 1821 that would be true.

Mr. SONDLEY: The State of North Carolina objects to any examination made from that map of 1821 until the State of Tennessee produces it, or until it is introduced as evidence in the case and will be present on the hearing before the Supreme Court of the United States, or unless it is introduced in evidence already, and will object to all evidence regarding it.

615 Q. 744. Now Mr. Burns, you also said right along in that same connection in your last re-examination, as I understood it, that coming down this ridge from the North side of the Tennessee River that Slick Rock Creek was the only creek you could see?

A. I said it was the only creek of any particular size coming in from the South side of the river, near to the point where the State Line comes to the Tennessee River from the North side.

Q. 745. I understood you coming down from the North side to the Tennessee River that Slick Rock Creek was the only stream?

A. I said following the State Line from the North side of the river to where it comes to the river that Slick Rock Creek is the only stream coming into the river near that point which I noticed.

Q. 746. You can't see the water of Slick Rock at all from this mountain on the North side?

A. I believe too by the use of a telescope you could see the groge very distinctly.

Q. 747. Now coming down that side of the river, Cheoah River is plain to be seen?

A. I don't recall that you could see Cheoah.

Q. 748. Do you swear that you never saw Cheoah River from any point on this State Line where you commenced the survey from the Turnpike Road going Southwesterly towards the Tennessee River?

A. I never said that.

Q. 749. Well, do you say it?

A. I don't remember that I ever did say it. I think you can see the gorge from two or three different places.

Q. 750. Are you sure of that?

A. I am perfectly sincere in what I am telling.

Q. 751. Your attention was directed to Slick Rock?

A. That was where I expected to find the State Line, and that is the reason I paid more attention to it.

Q. 752. And expecting to find the State Line at Slick Rock you were moving and had your face turned towards Slick Rock, didn't you?

616 A. Of course when I went into the country to locate the State Line I expected to find it near the mouth of Slick Rock near the Tennessee River from the map of 1821 as I have testified.

Q. 753. Now before you went into the country you had fixed up your mind that this stream marked "creek" there was in fact Slick Rock Creek, didn't you?

A. I was not prejudiced in my search in trying to locate the State Line at any point.

Q. 754. Without the question of prejudice—before you went into the country that this stream marked a "creek" upon the original map of 1821, was Slick Rock Creek, hadn't you?

A. All the people that I had talked to that knew anything about the State Line in that vicinity always told me that stream was Slick Rock Creek and I didn't know whether it was or not.

Q. 755. And you expected to find the line right there?

A. Yes sir, and I did find it there.

Q. 756. Well, that is what you say about it—that is your idea of it?

A. Yes sir.

Q. 757. Now you say you did things over in Graham County, N. C., that nobody else ever did. What were some of them?

A. I believe that I stated in the answer that you are referring that I had made a survey of possibly two-thirds of the land in Graham County. I was the chief engineer in charge of the work. I personally run a party all the time and had two others running most of the time and almost continually, and in that survey I surveyed what was known as the Belding lands, the Fain and the Bushy lands, Wilmarth lands, Stevenson lands and a number of others.

Q. 758. Stevenson's—those the same as in the controversy with the Fains?

A. No sir, commonly known as the Stevenson lands.

Q. 759. You don't mean to say you did anything extraordinary, but simply did more surveying than anybody else and had located more lands?

A. Had located more lands in there than anybody else did find.

Q. 760. Now I believe you stated in this last re-examination
617 of yours that you were still working on the Hopkins-Belding lands?

A. Yes sir, I am finishing up the work.

Q. 761. And also for Whiting of the Whiting Company?

A. Yes sir.

Q. 762. Now which one of them are the owners of the land down here on Slick Rock?

A. One of the Beldings—one of the Belding tracts, Entry No. 1035 covers that territory.

Q. 763. Now that is a powerful good water power down there?

A. All those mountain streams are good for water power.

Q. 764. Which one of those companies are much interested in water power, the Belding, or the Whiting, or both?

A. Not either one that I ever heard of. The Whiting Company is a timber proposition. Another company that bought it, the water power. I never heard of it but very little.

Q. 765. Now you say Cozad furnished you a copy of the map of 1821 before you went on the ground to make your survey of the State Line—was it up Slick Rock or Little Fodder Stack that he thought the line run?

A. Mr. Cozad was of the opinion that the line run up Slick Rock Creek for about a mile and a quarter and then went up over the Little Fodder Stack and then around to Big Fodder Stack, as shown by the dotted line on my Exhibit "D."

Q. 766. Now you say that when you went down there on the North side of the river just above the mouth of Slick Rock on last Saturday you blocked tree No. 30?

A. Yes sir.

Q. 767. And I believe you say a man by the name of Debity was with you?

A. Yes sir. B. E. Debity, commonly known as "Babe" Debity.

Q. 768. Where did you come from?

A. From Asheville out to Andrews and from Andrews over to Robbinsville, and I had a brother out surveying and I went to see him and got this man Debity, who was working with my brother, and got this man Debity to go with me because he was working with this Mr. Gannett when he found the tree.

618 Q. 769. That was the first time you ever saw it?

A. Yes sir.

Q. 770. You never made any technical examination of it before?

A. No sir.

Q. 771. Never saw the marks on it before?

A. No sir.

Q. 772. You are sure of it?

A. There was a number of trees along the river that had some marks on them but I wasn't satisfied they were State Line marks

Q. 773. But you never saw this tree No. 30 before?

A. No sir, not until last Saturday.

Q. 774. You never knew it had any marks on it until Gannett told you up at Asheville?

A. That was the first I ever heard of the tree.

Q. 775. Are you sure of that?

A. Yes sir.

Q. 776. I read from your examination in chief taken at Asheville, on pages 341 and 342 of the carbon copy of testimony furnished the State of Tennessee, as follows:

"Q. Coming back to your map, if I understand you in your testimony in chief, you indicated by giving the number of the various trees that you examined personally?

"A. Yes sir.

"Q. If I understand you correctly, you didn't make any examination of tree number thirty?

"A. No sir. We were in somewhat of a hurry when we went along there. I searched carefully for marks and found one tree coming to Slick Rock that I thought had State Marks on it, but I don't recollect what kind of a tree it was. I have a distinct recollection that we had some doubts about the marks being State Line marks.

"Q. You do remember that you found the tree marked, and that you had some doubt about their being State Line marks?

619 "A. I was pretty positive that they were State Line marks but I wasn't absolutely sure, and I didn't take any notes of the trees.

"Q. Among those trees which you examined personally, you gave number twenty-nine and number thirty?

"A. Yes sir."

Is that true?

A. That tree No. 30 must have been an error. I never mentioned No. 30. Must have been No. 31.

Q. 777. And you didn't examine it down there because you was in a hurry?

A. We only had a limited time to make the survey and we searched as carefully as we could along the line.

Q. 778. Now how far is that tree from the river bank?

A. Right on the river bank—at high tide goes right up to it.

Q. 779. Now this block which you filed as Exhibit No. 11—this is the top of the block or up the tree end?

A. Yes sir.

Q. 780. The square end of the block is further up the tree than the angle end?

A. Yes sir.

Q. 781. Now this you took out on which side of the tree?

A. The side down the river, on the Northwest side of the tree.

Q. 782. Now you say it was blocked on the upper side into 1853 year old marks?

A. I said that I picked up a block that was laying down on the ground.

Q. 783. Did the blockings go any further than the 53rd year old marks?

A. I said in my testimony a while ago that I attempted to count back from the fragments and the tree itself. It was in a kind of haggled condition. I counted back to 83 or 90 and possibly it went back to 89 or 90 and possibly it didn't.

Q. 784. Why didn't you block that side into a place where you would be satisfied that the annual rings would show 89 and leave one side of that marked tree standing there uncut?

620 A. I did.

Q. 785. What?

A. I did. I chopped further into the block.

Q. 786. I am talking upon the side that was blocked?

A. That is the way I am answering the question. I chopped into the notch on the upper side.

Q. 787. You didn't find any original marks on the Northeast side of that tree where it had been blocked?

A. In the first blocking it had been split, or the original marks that was marked on the upper side might not have struck the wood.

Q. 788. Then you had gone in far enough to satisfy yourself that you had gone into the annual rings?

A. Yes sir.

Q. 789. You didn't find any marks of 1821 in there, did you?

A. Not on the upper side, because that portion of the block was not present on the ground.

Q. 790. You did not find any annual rings of 89 or 90 on the upper side of the river?

A. No sir.

Q. 791. And you tried?

A. Yes sir. Because I did not want to destroy all marks on the lower side.

Q. 792. You didn't find any up there?

A. None on the upper side, for the reason they might have not struck the wood and for the further reason they might have been destroyed in blocking the tree at this time.

Q. 793. You said just above, 150 feet or 150 yards?

A. 150 feet.

Q. 794. 150 feet up towards that marked hemlock or pine you found a pine or hemlock tree with marks on the side, State Line marks on the side?

A. Yes sir.

Q. 795. Which side?

A. The side facing away from the river.

621 Q. 796. That would indicate that the tree was between the line and the river?

A. Yes sir, the way it was marked.

Q. 797. How many marks?

A. State Line marks. Two of the marks they looked very plain to me and the other one was not quite so distinct, but I am satisfied it was an original State Line mark.

Q. 798. Since it was not so distinct why did you destroy them?

A. I had one block out. That was sufficient.

Q. 799. If it was 1821 marks that would have been an additional fact confirmatory of your theory?

A. Yes sir.

Q. 800. And then you just guessed at it being 89 years old?

A. I associated it with other marks on the State Line that I found there and that is the way I detected it was a State Line tree.

Q. 801. Now to account for the width of the river as sketched in on this map of 1821 in your last re-examination you said that passing down the river from that fore and aft hemlock tree up there on the North bank would be about 3,000 feet, didn't you?

A. It would approximate that. I believe it is a little less than that, something like over a half mile I would say.

Q. 802. Do you mean by that to have us understand that the line made a bend there and the last 3,000 feet of it was down the stream and into the water?

A. I believe that the commissioners run the line down the Smoky Mountain down the side of the river down to this spruce pine or hemlock and crossed the mouth of Slick Rock and up Slick Rock Creek.

Q. 803. That part of the line that is in water, in order to give the width you account for it running down the mouth of the river to Slick Rock?

A. Taking the place coming from the North side and taking the place as run it would be the way it could be construed. I

622 believe the river was just sketched in. They didn't care how wide it was. In fact they have sketched in the other streams shown on there.

Q. 804. What is the width of one of these mile circles on this original map?

A. I would have to draw a scale, or rather I would have to try to get a scale. 1.100 of an inch is 132 feet on that map.

Q. 805. Would a mile circle cover that 1.100 of an inch?

A. Yes sir. A line I would say 1.100 of an inch wide would be difficult to see on a map. You can see it but not very plain.

Q. 806. Mile circles take up a very good deal of space on that map, don't they?

A. Yes sir.

Q. 807. Now Fodder Stack, Big and Little, ridges on one side and the Stratton Bald and Hangover ridge on the other side make the water shed of Slick Rock Creek, don't they?

A. Yes sir, one of the ridge leading down from the Hangover and the Fodder Stack ridge that you have mentioned make the water shed.

Q. 808. Now Mr. Burns, going back to your Exhibit "D"—between the Little Tennessee River and the Cheoah there is a short range of mountains in there?

A. Yes sir.

Q. 809. Now then off between Cheoah River and Stratton Bald and Hangover and the balance of the line down there there is another range of mountains, isn't there, a spur?

A. The range of mountains running from the Junction over Stratton Bald and Hayoe is a distinct mountain range for that distance. After reaching the Hayoe it separates into a number of different ridges leading down to Cheoah and leading down the Tennessee River to the mouth of Slick Rock, and the various spurs leading down between the different streams show on the map between Bear Creek and Barkers Creek and so on to the main ridge leading down Hayoe is the main water shed between Santeetlah, Deep Creek and Rock Creek that the main ridge leading down between Stratton Bald and Hangover to the river.

623 Q. 810. That is your idea?

A. Yes and anybody's that would go over there and see the country.

Q. 811. Why didn't you put Huckleberry Knob and Hoopers Bald on your map?

A. Because I didn't think it was necessary.

Q. 812. Because they are not connected with this State Line Ridge?

A. Because they are not connected with the State Line, but they are the highest peaks in that country.

Q. 813. They are *sus*ceptible from that ridge, the same as Hangover and Big Fodder Stack is *sus*ceptible?

A. Yes sir.

Q. 814. Is it not a fact that around Huckleberry Knob run the main waters of Santeetlah?

A. Yes sir.

Q. 815. And in between Huckleberry Knob and the main ridge of the mountain on which there is a part of the Tennessee and North Carolina line undisputed?

A. I don't quite catch what you are asking about.

Q. 816. Don't the headwaters of Santeetlah lie between Huckleberry Knob on the East and the main ridge of the mountain along which an undisputed part of the State Line runs on the West of those headwaters?

A. Well the headwaters of Santeetlah, all the country d*ar*ined,

most of the country drained by it, at least from Hayoe around the Stratton Bald and the Junction and along the undisputed section and the Hoopers Bald is all drained by Santeetlah.

Q. 817. Now answer my question—isn't it a fact that between the Huckleberry Knob, on the East, and an undisputed part of the State Line, on the West, running along the main ridge of the mountains are the headwaters of the Santeetlah river or creek, whatever it is?

A. That is the question that I have answered.

Q. 818. Aren't those headwaters between an undisputed part of the State Line on the West and the headwaters of Santeetlah on the East?

A. Some of the waters of Santeetlah run along a part of the disputed and undisputed section.

624 Q. 819. Aren't they between Huckleberry Knob on the East and an undisputed part of the State Line on the West?

A. A portion of Santeetlah is.

Q. 820. Are there any tributaries between Hayoe and Stratton Bald and the Junction?

A. That is the top of the water shed along there.

Q. 821. Is there any water shed between Hayoe and Stratton Bald and the Junction?

A. I said it was a distinct ridge, a water shed.

Q. 822. On one side the waters run East and on the other side they run West?

A. On one side they run into Slick Rock and on the other side they go into Santeetlah.

Q. 823. You did a good deal of talking in your last re-examination about Tennessee's contention. Who did you get your understanding of Tennessee's contention from?

A. Well I can't begin to enumerate the people that I did get my ideas from. I suppose that I was told by Mr. Cozad that they claimed it over the Hangover and my father has told me and everybody in the country that knew anything about the State Line that I have talked to has told me about it, and then there is a marked line too.

Q. 824. Marks all along that ridge?

A. Yes sir.

Q. 825. I call your attention to the map of 1821 at the point where the State Line crosses the river and South of the Little Tennessee River where it seems to run along on a slight distance away from some stream, and I will ask you to point out whether there is a mark of a mile circle on that line East of that stream?

A. The mile circle that shows seems to be right in the edge of the stream on the West side.

Q. 826. And between the red line as marked and the stream?

A. Seems to be right on the stream, the circle touches the stream.

Q. 827. And then it is between the circle and the stream?

625 A. Yes sir.

Q. 828. And also on the East?

A. And on the West.

Q. 829. It is between the red line and the stream?

A. The red is just shaded to make the line stand out more prominent.

Q. 830. The hachures on this map just immediately West of this line just after it crosses the creek is more prominent than on any of the copies, aren't they?

A. I don't know, perhaps they are. They show distinctly on the original, but I didn't notice as to the copies and can't say.

Gen. CATES: Now in regard to this map of 1821, it will stay in the custody of the State Archivist and subject to examination by counsel for North Carolina at Nashville at any time, and it will be produced on the hearing of this cause before the Supreme Court of the United States.

December 2, 1910, at 12:20 the further examination of the witness D. B. Burns was adjourned till 2:00 P. M. at the same place.

December 2, 1910, at 2:00 P. M. the further examination of the witness D. B. Burns was resumed, pursuant to adjournment.

Present:

(For North Carolina): General Theo. F. Davidson, Ben Posey, Esq., F. A. Sondley, Esq.

(For Tennessee): Charles T. Cates, Jr., Attorney General of Tennessee; T. E. H. McCroskey, Esq.

D. B. BURNS, resuming the stand for further examination, testified as follows:

626 Redirect examination by F. A. SONDLEY, Esq., on behalf of the complainant, State of North Carolina:

Q. 240. Just a few questions Mr. Burns. You spoke of some exhibits having been handed to you in this case. How did they happen to be turned over to you by the stenographer in Asheville?

A. I suppose it was for the reason that I had a good place to keep them where they would be safe in my office in Asheville.

R. D. 241. Have you ever in any way tampered with or changed any of them?

A. Not in the least.

R. D. 242. You have said something about when the surveyors made this map of 1821 they would first traverse and apparently from answers to questions of counsel for Tennessee that they would first traverse the distances over the land. What did you mean by that term "traverse"?

A. The term "traverse" in the way in which I used it I meant that they would take the course and distance of every little angle that they show and from that course and distance find the latitude and diameter of that line and from those latitudes and diameters that they could figure up the distance from the axis and plat the line and from that method they could more correctly fit the line on the map and by that course of preparation it would be two or three days

before they could plat the line at all. That is what I had reference to when I used the term "traverse."

R. D. 243. If they put it on three several sheets separately would it be more natural and customary to first plat the sheets and then paste them on the cloth, or paste them on the cloth and then plat the sheets?

A. To plat on the sheets first and then paste to the cloth.

R. D. 244. For what reason?

A. For the reason that always in pasting paper together it is not so smooth and makes it difficult to slide triangles and other surveyor's instruments over it from one side to the other.

R. D. 245. You spoke in your examination about where the sheets that are to the extreme left and that next to the left of the
627 middle of these that came together there being a mile circle at the end of each sheet next to where it was pasted?

A. Yes sir.

R. D. 246. And you thought that was designed to indicate one mile circle?

A. Yes sir.

R. D. 247. Do you know of such a thing as conjoining in chirography, in chirographic maps or others that adopt that kind of practice and how commonly it is done?

A. It is very commonly done. I have noticed where the names would be lapped on one sheet on maps where they are continued from one sheet to another.

R. D. 248. As I understand it is a convenient method for pasting together to prevent mistakes by pasting sheets together?

A. Yes sir.

R. D. 249. Now something was said in your last examination about Slick Rock Ridge and I didn't catch where that was. Where is Slick Rock Ridge?

A. I don't remember Mr. Sondley about that question being asked me.

R. D. 250. And I am not sure whether it was in the question or in the answer, possibly it was Slick Rock Gap or Slick Rock Creek?

A. Really I don't know of any ridge being called Slick Rock Ridge.

R. D. 251. Now you spoke about the point of crossing the Tennessee River by the State Line being where the stream marked "creek" came in and said that that creek would lie as to some of its upper waters as platted and laid down on the map of 1821 East of the Hangover Ridge and would have to cut through the Hangover Ridge to go into the entrance of the point indicated if it was Slick Rock Creek. That as I understand was the same matter about which you testified yesterday and you thought it was sketched in?

A. That the creek was sketched in.

R. D. 252. And not by actual survey?

A. No sir.

R. D. 253. Now a witness by the name of Robert Grant has testified to something about making a survey in company with surveyor

Burns in that country and I didn't think about asking you about it before. What Burns was it, yourself?

628 A. No sir. My brother what I thought he had reference to, was in the survey of Entry 920 which my brother surveyed and Robert Grant was one of his chain carriers and he was present with him.

R. D. 254. You spoke of surveying lands under the employ of Mr. Cozad and spoke of it being embraced in this controverted land. How much land between North Carolina and Tennessee does it embrace in proportion of uncontroverted land?

A. Why there is, I suppose, 10 times, or may be more, of lands that I surveyed that was not in controversy. The amount of acres in controversy would be about one-tenth of the lands not in controversy that I surveyed in the trade between the two parties.

R. D. 255. I notice that on this map of 1821 this stream marked "creek" that enters the Tennessee River where the State Line crosses runs for the greater part of its distance about parallel with the Tennessee River. Is that correct?

A. Yes sir.

R. D. 256. Is that true in regard to Cheoah River?

A. No sir. Cheoah River doesn't run parallel with the Tennessee River.

R. D. 257. Now you spoke of a mountain range, as I understood you, between Cheoah River and Tennessee River. How does that range that you spoke of run in relation with those two rivers—Cheoah and Tennessee? If it is parallel to either, to which is it parallel?

A. My recollection of the mountains along there that they run more directly parallel with Cheoah River. Really I have not a very vivid recollection of those mountain ranges now. There is a mountain range between Tennessee River and Yellow Creek and comes down to the Tennessee River pretty close to the Cheoah River. It runs parallel with the Tennessee River and Yellow Creek and I believe it is called Yellow Creek Mountain.

R. D. 258. Which one of the ranges was you speaking of?

A. When I answered the Attorney General I had reference to the Yellow Creek Mountain between Tennessee River and the Yellow Creek.

R. D. 259. Where are those mountains? Now how high up Cheoah?

A. They really don't run along Cheoah at all. Between

629 Tennessee River and Yellow Creek next to the mouth of Yellow Creek they point out at Cheoah River and Yellow Creek and at the rise of Yellow Creek they would be considered not very high.

R. D. 260. How far from the junction of the two streams?

A. It commences almost at the Junction.

R. D. 261. Is that the range that you spoke of as lying between Cheoah and Tennessee?

A. Between Yellow Creek and Tennessee.

R. D. 262. It doesn't go down to that angle between Cheoah and Tennessee?

A. No sir. Yellow Creek comes down to the Tennessee River on the opposite side.

R. D. 263. Is there another range in there then between Cheoah and Tennessee?

A. There is mountains in there—I don't remember very well—very much broken, not much regularity about them.

R. D. 264. Now speaking about this ridge that you said about the point called Junction and after it passed Hangover. I believe you said the main ridge run up Cheoah River?

A. About five miles from its mouth.

R. D. 265. Do you know of any mountain range to let us know something of its size?

A. I run a level—did run a transit line down all the different views of the country as to the size of the highest ridge and the highest leading down to the Cheoah.

R. D. 266. How near its elevation does it reach to the Cheoah?

A. Considerable descent all the way until it gets down to the river and then descends very steep when it gets down to the river.

R. D. 267. Something was said in your last cross examination in regard to water between Huckleberry Knob and Hoopers Bald and the unquestioned State Line. Suppose you were to start from Hoopers Bald and Huckleberry Knob and go to that State Line, would you cross water?

A. No sir.

R. D. 268. Why not?

A. Continuous range of mountains from Huckleberry Knob that goes back from Huckleberry Knob over Hoopers Bald and
630 then strikes the State Line a continuous mountain line or ridge.

R. D. 269. You state that the point in which the copy of the map of 1821 attached to Williams' deposition struck you as being most inaccurate at first examination was above where the path to the Valley Towns crosses the mountain?

A. Yes sir.

R. D. 270. I wish you would look at the map of 1821 and see whether it shows an approach of the Valley Towns path towards the Eastern part of the mountain?

A. Yes sir.

R. D. 271. And is that approach on the Eastern side directly opposite to where it leaves it on the Western side?

A. The path seems to come to the line and then follows along it for two or three miles.

R. D. 272. Now reading from this report of the commissioners who made the survey of 1821 it says:

"From Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called the Unicoy, or Unaka Mountain, striking the old trading path leading from the Valley Towns to the Overhills Towns, near the head of the West fork

of Tellico River, and at the distance of ninety-three miles from the beginning."

Which point would that 93 miles from the beginning be where that path to the Valley Towns come up on the mountain from the East, or the point where it left the mountain to go towards the Overhills Towns on the West?

A. The 93rd mile comes to the path as the trail comes toward Valley Towns over the Overhills path.

R. D. 273. What would be—what would it be to the point, if you can't say accurately, where it leaves the mountain to go to the Overhills Towns from the beginning?

A. Nearer to the 96th mile.

R. D. 274. Then does that trail as called for in that report
631 enable you to test in any way the adherence of the plat to the ridge and to find out the situation out there to let you know whether or not you were right or not when you adopted a particular line?

A. Yes sir it is an aid. The 93rd mile as shown on the plat and the 93rd mile from actual survey of the ridge is easily detected in an actual survey as to where the 93rd mile is aside from counting from a known mile tree.

R. D. 275. Would that strike the 93rd mile tree from the beginning if you started according to the Tennessee contention from the beginning?

A. No sir, it would be something like 6 miles further.

R. D. 276. Would it fit if you were to adopt one contention of Tennessee and reject another?

A. Why I don't quite remember. There isn't such a great difference over the Hangover and Little Fodder Stack and around the head of Tellico.

R. D. 277. Which way would you have to go in order to make it exactly fit?

A. Have to go up Big Fodder Stack and around the undisputed line to the County Corners and then around Jenks Knob to the disputed territory it is very close.

R. D. 278. I presume those two circles on the map of 1821 where the line is pasted together is intended for one?

A. Yes sir.

R. D. 279. Where the extreme left hand sheet is pasted in the middle?

A. Yes sir.

R. D. 280. How would that tally with the call of the report which is in these words, after stating running with various ways: "passing Meig's boundary line at thirty-one and a half miles, the Equovettly path at fifty-three miles" how would it make that if you treated those two lines when you got to Equovettly path?

A. It would make a check on that Equovettly path.

R. D. 281. "And crossing Tennessee River at the distance of sixty-five miles from the beginning." How would it check in crossing the Tennessee River at 65 miles?

A. It would check.

MAPS

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632 R. D. 282. And it also says, thence etc. to certain points "and where a hickory tree is also marked on the South side Ten. 101 M. and on the North side N. C. 101 M. being one hundred and one miles from the beginning." You know where that hickory tree is?

A. I didn't find a hickory tree, I found a stone set up and I found a line leading off the South about a half mile leading to the Turnpike Road.

R. D. 283. How does it correspond with that call as treating those two places on the plat—as near in accordance with the contention of North Carolina?

A. They check.

Recross-examination by C. T. CATES, Jr., Attorney General for Tennessee on behalf of the defendant, State of Tennessee:

Q. 831. There was one question that I forgot to ask you that was adverted to in your re-examination some time ago as the point called "County Corners" on your map Exhibit "D." Just where is "County Corners"? Is it the point where State Ridge begins and also where the line as claimed by Tennessee running around the headwaters of Tellico River shows that line running from Laurel Top down to State Ridge?

A. Yes, sir, that is my understanding. My understanding that State Ridge begins at County Corners, the junction of the two ridges.

Q. 832. It is this particular point?

A. Yes sir.

Q. 833. Make a red circle there please and "D. B. B." on a copy of Exhibit "D" which is made Exhibit "X" to your deposition?

A. I do so, marking a circle there with my initials.

Q. 834. Now reference was made to a mountain between Cheoah River and Little Tennessee River. I will ask you to state if on this map of 1821, the original of which is before you, there doesn't appear a mountain Southwest of the Little Tennessee River and between it and the stream marked "creek," which stream runs

633 into the river about there—about where the State Line crosses it?

A. Yes sir, the hachures show that.

Q. 835. And doesn't that mountain extend from the junction of the river and this stream marked a "creek" about to opposite where there runs into Little Tennessee River a stream from the North side and into the North bank of the river?

A. Yes sir.

Q. 836. Now please make Exhibit "Z" to your deposition the government topographic map known as "Murphy Sheet" upon which you designated the point on the State Line which you thought was Jenks Knob—the designation being made by a cross and the letters "J. K."?

A. I do.

(Here follows map marked "Exhibit Z to Deposition D. B. Burns.")

Redirect examination by Mr. SONDLEY, on behalf of the Complainant:

R. D. 284. In regard to these hachures just spoken of that lie down there in the junction of the creek and *and* the Tennessee River on the map of 1821. Do you understand those hachures to designate any mountains or how were they put there?

A. Just to put in the lead that follows the Tennessee contention leading up to the Hangover.

R. D. 285. There is such a lead?

A. Yes sir.

R. D. 286. And do those hachures indicate the mountains and other ridges around that line?

A. No sir, very inaccurately; pretty familiar with all that section of the country.

R. D. 286. In taking in this mountain that they say lies in between Cheoah and the Tennessee River, how high up does that mountain go as shown by the topographical map issued by the United States up to what point up the Tennessee River?

A. You mean in elevation?

R. D. 287. I mean in distance—how high up the Cheoah and the Tennessee Rivers does that mountain range run according to the topographical sheet?

634 A. Oh, up to the mouth of Sawyer's Creek, I don't know the distance.

R. D. 288. How is it designated on the topographical sheet?

A. Yellow Creek Mountain.

R. D. 289. How far up Cheoah is it up that mountain range to Sawyer's Creek?

A. Must be 20 miles.

R. D. 290. How nearly accurate from your knowledge of the location *is* that topographical map of the United States is that Yellow Creek mountain as determined upon that map?

A. It represents it very closely.

R. D. 291. What is its direction from the mouth of Cheoah, generally?

A. Generally East and West.

And further this deponent saith not.

D. B. BURNS.

Sworn to before me Nov. 30th, 1910.

S. E. CLEAGE,
Supreme Court Clerk.

635 S. S. GANNETT, being first duly sworn, testified as follows:

Examined by F. A. SONDLEY, Esq.:

Q. What is your name?
A. Samuel S. Gannett.
Q. What is your age?
A. Forty-nine.
Q. Where do you live?

A. My home is in Washington, D. C.

Q. What is your occupation?

A. I am employed by the United States Geological Survey, engaged in topographic surveying.

Q. What position do you hold in that Geological Survey?

A. My title is that of Geographer.

Q. Have you had any experience in matters of Surveying?

A. Yes sir.

Q. Have you had any experience in matters of topographic work?

A. Not so much in topographic work proper as what is known as astronomical work and computations used in connection with topographic work.

Q. Have you had any experience in matters of charts and cartography?

A. Yes sir.

Q. Tell us what your education and training has been?

A. I was educated in the schools of Augusta and Bath, Maine, and Bowdoin College, Maine, and in the Mass. Institute of Technology at Boston. I also received instructions in Astronomy from Prof. R. S. Woodward, present head of the Carnegie Institution in Washington, D. C.

Q. After your education in college what work did you do first?

A. In 1881 I was engaged in surveying in Delaware a year before I entered the Geological survey, and before that I did some Civil engineering work.

Q. How many years' experience have you had in matters of land surveying?

A. I have had experience in surveying for thirty years, but as a member of the Geological Survey only twenty-eight years.

Q. How frequently have you been engaged in work as a surveyor?

636 A. Practically every year since I was employed by the Geological Survey.

Q. Did you ever survey lands in mountainous country?

A. Yes, sir. First, in 1882, in Western North Carolina,—during the years 1882, '83, '84, '85 and '86.

Q. Did any of that bring you into woods work and craft surveying?

A. Yes, sir.

Q. Have you any knowledge of trees and marks upon them or that bore upon the question of surveyed lines or the indication of the marks?

A. Yes, sir.

Q. Do you think from your knowledge of those matters of cartography, wood craft and surveying you could form an opinion upon such matters satisfactory to yourself?

A. Yes, sir.

Q. Have you ever had any experience in locating disputed state boundaries?

A. Yes, sir.

Q. Give us that in detail?

A. In 1897 I was detailed to the Indian Bureau of the Interior Department to locate the intersection of the 107th Meridian with the Colorado-New Mexico boundary line by means of the marked line; and again in 1898 I was detailed to assist in the work of locating the boundary line between Montana and Idaho, starting where a certain Meridian crosses the Bitter Root Mountain, and established that by astronomical observations. In 1908 I was engaged throughout the season in re-marking and retracing the boundary line between Idaho and Washington for a distance of about 120 miles.

Q. Have you made any report of the work done in those cases you have mentioned?

A. Yes, sir; in connection with my official duty.

Q. What was the result; were they accepted or rejected?

A. In every case they were accepted.

Q. Have you any commission now in regard to State boundary lines?

637 A. On May 31, 1910, I was appointed by the Supreme Court of the United States as one of three commissioners to mark the boundary line between Maryland and West Virginia. The case was decided in May by the Supreme Court, and I was appointed as mediator representing the United States.

Q. That work has yet to be done?

A. Yes, sir.

Q. How long have you held the position of Geographer with the United States Geological Survey?

A. I think, about nine years.

Q. What is your particular sphere of duty in that regard?

A. In the office my particular work is to examine the field notes sent in by field parties; judging, from the notes, whether the work has been carefully and correctly done. I also judge the office work of the various men to see if their computations are correctly done.

Q. Your constant duty is in dealing in surveying matter?

A. Yes, sir.

Q. Have you ever been on any of the mountains of the Alleghany or Appalachian range?

A. Yes, sir. In the early years, all of my work in the eastern states, from Maine to North Georgia, and I have been on practically all of the prominent mountains on those ranges.

Q. For what purpose?

A. For the purpose of establishing the highest points and especially those points by the method of triangulation.

Q. Did that work you speak of pertain to the North Carolina mountains in any great degree?

A. Yes, sir; in all of the counties in Western North Carolina, I went on all of the highest points.

Q. As I understand, the United States Government is engaged in locating and accurately ascertaining and recording the elevation and location of all the prominent points of the country?

A. Yes, sir.

Q. And those matters are published for the information of the public?

A. Yes, sir.

638 Q. And your work has been in getting that data?

A. Yes, sir.

Q. Have you located, with reference toward each other, the prominent mountains of North Carolina and East Tennessee?

A. Yes, sir.

Q. Has that extended to taking in streams and other prominent features of the country?

A. More particularly the higher points and the main ridges.

Q. I hand you a chart, or a portion of a chart, and ask you to state what it is?

A. It is a topographic map made on four sheets, or quadrangles, Murphy, Nantahala, Knoxville, and Loudon, partly in North Carolina and partly in Tennessee, joined together as one map.

Q. Who issued that map?

A. It was issued by the United States Geological Survey.

Q. Is its topography of that part of the country correctly represented?

A. Yes, sir.

Q. What did you have to do with it?

A. In 1883 and '84, I located, by triangulation, the higher mountains of that section of the country, and used that data as a basis for this map.

Q. I see here a list of workers, and among them is mentioned "triangulation by S. S. Gannett": Who was that?

A. Myself.

Q. Have you ever had your attention called to the controversy now pending between North Carolina and Tennessee, relative to the location of the boundary line between them, in the neighborhood of the Tennessee river?

A. Yes, sir.

Q. How did you happen to have anything to do with that matter?

A. The Attorney General of North Carolina requested the geological survey to investigate that question, and to find out, if possible, where the original line was run and marked; and I was selected by the director of the Geological survey to engineer the work.

639 Q. What were your directions as to what you were to do?

A. I was to actually go on the ground, and to find out, from my knowledge of the country and experience in such matters, where the original line was actually run and marked.

Q. Were you committed to any particular view, or was it your duty to find out the facts?

A. It was my duty to find out the truth about where the line was run, regardless of whom it affected.

Q. At what time did you enter upon this work, under those directions?

A. During the latter part of April, 1910.

Q. Where did you go?

A. I went to Murphy, North Carolina, and started from that

place, and went first to the 101st mile post, where the turnpike crosses the Unicoy Mountain, and then I ran a line southward.

Q. Who accompanied you to that point on the mountain?

A. Mr. D. B. Burns, as Civil Engineer, and some other men. Mr. Hughe Sadler, a settler of Tennessee, showed us where the 101st mile post was, and he accompanied us down the line to aid in the identification of the line.

Q. Did you make any investigation out there in the vicinity of the 101st mile post to aid you in determining whether or not that was the 101st mile post?

A. Yes, sir; I ran a line southward and identified several trees. We blocked one tree, and counted the age of that tree; the age showing 88 years, which proved the line to be the original marked line of 1821.

Q. How could you tell by blocking the tree?

A. By counting the rings on the block since the wound was inflicted on the tree.

Q. You found that the incision was made in the tree in 1821?

A. Yes, sir; just as close as we could count the number of rings.

Q. Mr. Burns has introduced, in his testimony in this case, a block from a tree, which he says was taken from a tree near the 101st mile tree. Is that the blocking you participated in?

A. Yes, sir; it is located about 500 feet south of the 101st mile stone.

Q. Having satisfied yourself of the age of that, you were
640 satisfied that it was a state line mark?

A. They were decided marks, showing two hacks above a blaze.

Q. You understood that to be the mark of 1821, on the North Carolina-Tennessee boundary survey?

A. Yes, sir; and we found three trees that were side-line trees.

Q. What was the first tree?

A. It was a fore-and-aft tree.

Q. Having satisfied yourself of the location of the 101st mile tree, what did you do on that occasion?

A. Mr. Burns and myself ran a line Northeast from the 101st mile station, on the undisputed line, and we were able to identify that line by several marked trees, either marked by three hacks, as side-line trees, or two hacks above a blaze for a fore-and-aft tree.

Q. A plat was introduced by the State of North Carolina, while Mr. Burns was testifying, for the purpose of illustrating Mr. Burns' testimony, purporting to be signed by Mr. Burns, and by S. S. Gannett: Did you sign that map?

A. Yes, sir, I signed it.

Q. You can use this plat to illustrate your testimony if at any time we need the plat. Point out where that state line—where the 101st mile post on the state line is located, if you are familiar with that plat?

A. It is in the upper left hand corner of the plat.

Q. Now, where did you go from the 101st mile tree?

A. We ran a line along undisputed line on the main divides to what is known as Jenks Knob.

Q. What document did you have in making that survey?

A. We had a blue print, which was a certified copy of the original plat of 1821.

Q. Look at that exhibit, introduced while Mr. Burns was testifying, and see if that is the blue print which you had?

A. Yes, sir.

Q. When you got to Jenks Knob had you found any state line trees?

A. Yes, sir.

641 Q. Do you remember the number of trees you found between those points?

A. The record is given on this plat. I verified the number. It was twelve trees.

Q. Were they marked as state line marks?

A. Yes, sir.

Q. What was their appearance as to age?

A. They were very old indeed, and very difficult to see in many cases. Still there is no doubt but that they were the original marked trees.

Q. Did you do any blocking between the 101st mile tree and Jenks Knob?

A. No, sir.

Q. When you came to Jenks Knob, you came to the point where the controversy began as you were informed?

A. Yes, sir.

Q. What did you do there, so as to ascertain what the controversy was, and in ascertaining what the truth was as best you could investigate it?

A. I investigated the line, and surveyed the line down what is known as Jenks ridge, and up the state ridge; and along those two ridges, I found several marked trees.

Q. Marked as state line trees?

A. Yes, sir.

Q. How did they compare in appearance as to age and the character of the marking, with the trees you found between the 101st mile station and Jenks Knob?

A. They were exactly similar marks, and had the same appearance as to age.

Q. Do you remember the number of trees you found in that space?

A. I found twenty trees on that disputed line between Jenks Knob and County Corners.

Q. Was Mr. Burns with you from Jenks Knob to County Corners?

A. No, sir; he had previously run that line, and I made an entirely independent survey of it.

Q. What was your reason for making an independent survey?

A. So there would be no doubt about it. I made the sur-

642 vey with the same instrument I used in surveying the line between Idaho and Washington, and employed exactly the

same methods, which were approved by the United States Government, and they proved that Mr. Burns' survey was correct.

Q. In talking with Mr. Burns at other times, have you learned his method of making the survey?

A. Yes, sir.

Q. Did you make your survey by the same method, or a different one?

A. Different, so as to have a check on his work.

Q. Your work tallied with his?

A. Yes, sir.

Q. When you came to Jenks Knob, and coming on to the County Corners, how did that correspond with the plat of 1821, a copy of which you had in blue print?

A. It tallied almost exactly in general course and distance for that scale.

Q. Would it be possible to take that plat and follow the undisputed line as close as you followed it, and go around by Jenks Knob to McDaniel Bald?

A. No, sir.

Q. And going from Jenks Ridge up the Tellico River, how would that tally with the plat of 1821?

A. Very close.

Q. I observe that the plat of 1821 does not show that the line crossed Tellico River?

A. No, sir.

Q. As a matter of fact, did you cross it in making that survey?

A. Yes, sir.

Q. Could you have made that survey in accordance with the map or plat of 1821, and avoided crossing Tellico River?

A. No, sir, if you follow the general course of the plat. You have to cross the Tellico River, if you follow the course indicated on the plat.

Q. How is it in regard to distance of the line around by Rocky Knob, and McDaniel Bald, and the other from Jenks Knob?

643 A. The distance is practically twice as far.

Q. Which route is consistent with the plat of 1821?

A. The route along Jenks ridge and State Ridge.

Q. Did you go along this route by Rocky Knob and McDaniel Bald at all?

A. I did not.

Q. Why not?

A. That was obviously so far out of the way that I didn't consider it necessary to go around that way. The original line was undoubtedly marked on the ground, and I decided that the line could not have gone around the head of Tellico river.

Q. How about the plat of 1821?

A. From that I learned that the same angles on the plat and the marked line agreed. I didn't exactly retrace the line along the undisputed portion to junction, near Stratton Bald but in reality I had been over part of that work in 1883 and '84; I had been on Haw Knob and other high points along that ridge.

Q. You went to junction?

A. Yes, sir.

Q. Who was with you when you reached that point at junction?

A. Mr. Burns met me there; or we met at junction together, and were on the line together two different days. We went out from Stratton Bald to the Hangover together.

Q. Did you find any marks from Junction to Stratton Bald, or along Hangover, marked as state line marks?

A. No, sir.

Q. Did you go anywhere from Hangover to the Tennessee River at any point?

A. Yes, sir. I went along the Hangover Lead, and investigated very carefully for marked trees along that Lead.

Q. Down from Hangover, between Slick Rock creek and Bear Creek, waters to the Tennessee river?

A. Yes, sir.

Q. Did you find any state line trees along there bearing the marks of 1821 survey?

644 A. No, sir.

Q. If there had been any state line trees along there, would you have found them?

A. Yes, sir; we looked very carefully. I have been along that line several times, and only found one tree that by any stretch of the imagination could have been considered marked by state line marks.

Q. Where was that tree, and what was it?

A. It was a double sourwood, located in what is known as sourwood gap; sometimes called Board Camp Gap.

Q. Is the place sourwood gap on this plat, you spoke of?

A. Yes, sir.

Q. What was the locality in which that tree stood?

A. It stood in a locality that had apparently been used as a camping ground. There was water and level ground there, and it had apparently been used as a camping ground.

Q. What indication of an old trail was there in the neighborhood?

A. There were indications of an old trail, leading down to the river, and one from the top of the ridge.

Q. Was that tree one which you could have blocked and found out what age the marks were?

A. The tree had been blocked by some one, but it was hollow inside, and apparently impossible to tell its age from the block.

Q. Were there any marks on it that you could see?

A. Yes, sir; there were a great many marks, and hacks which looked like they had been placed there promiscuously.

Q. Were there any marks upon that tree which indicated that they were surveyor's marks, or boundary line marks?

A. No, sir. I would say that the marks were placed there promiscuously, and without any regularity.

Q. Were the hacks all single hacks, or partly in one place, or were they placed one upon another?

A. There was one place which appeared to be a blaze and a hack, and another two hacks above a blaze, and another three hacks above a blaze.

Q. Was that blaze close to any state-line marks that you could find?

645 A. Yes, sir; but the hacks were not old enough.

Q. In your opinion was that a state-line mark?

A. No, sir.

Q. You say that Mr. Burns was not with you on a portion of that survey?

A. No, sir; he was only with me between Junction and Hangover.

Q. From Hangover down who was with you?

A. H. S. Hayes, E. E. Deputy and Pat Orr.

Q. Were you, at any other time along any other route from Junction to the Tennessee River?

A. Yes, sir; I was along Rock Stack, Fodder Stack and down Fodder Stack Lead to the forks of Slick Rock creek; and then down to the mouth of Slick Rock creek.

Q. What did you find from junction by way of Fodder Stack?

A. A number of trees well marked, apparently state line marks.

Q. How did they correspond in age and appearance and other respects with the trees which you considered state-line trees, which you found on the undisputed portion of the state line?

A. They gave every appearance of being original state line trees.

Q. When you got to Fodder Stack, what did you do?

A. I went out the Lead toward Little Fodder Stack sufficiently far to prove to myself whether there were any trees out that ridge, marked as state line trees, and I didn't find any out toward Little Fodder Stack.

Q. Then what course did you pursue?

A. I went down the Fodder Stack lead, leading Northeastward toward the forks of Slick Rock creek.

Q. What did you find along there?

A. Along the top of the ridge we found a large hemlock tree, which had old state line marks upon it; but, further down that ridge, there were no suitable trees for being marked, or if there had been, they had been destroyed by fire. Apparently, fire had swept across and destroyed the trees along that ridge; there is no big timber standing there at present.

Q. As you approached Slick Rock creek, did you find any other marked trees, marked as state-line marks, before you got to Slick Rock?

646 A. Just above the mouth of Slick Rock creek, we found several well marked trees, some of which had been formerly blocked by other surveyors. There were eight trees above the forks of Slick Rock that we could identify.

Q. How high above the mouth of Slick Rock creek did you reach it, in going from Big Fodder Stack down?

A. From the forks of Slick Rock to the mouth of Slick Rock, it was a little less than five miles.

Q. Did you go from there in any other direction, if so what?

A. After finishing that examination, I went along the creek and found several trees near the mouth of the creek.

Q. Did you go on down to the mouth of the creek?

A. Yes, sir.

Q. How did the trees from Big Fodder Stack down to Slick Rock creek and down Slick Rock creek, where you found them, to the Tennessee river, compare in point of age, and other characteristics, with the trees on the undisputed state line?

A. They had apparently the same appearance and were of the same age.

Q. What was their appearance as to the instrument with which the hacks had been put upon the trees?

A. Apparently, they were marked with the same kind of an instrument.

Q. Do you remember how many trees you found marked between junction and Big Fodder Stack, state line marks, of an old appearance?

A. We found twenty six trees between junction and Big Fodder Stack.

Q. How many did you find between Big Fodder Stack and where you reached the crest of the ridge, going down from Big Fodder Stack?

A. Ten trees.

Q. How many from the point where you first reached Slick Rock creek to the mouth of Slick Rock creek?

A. Eleven.

Q. So, then, from junction to Big Fodder Stack, you found twenty six trees, ten to Slick Rock from Big Fodder stack, making a total of thirty six trees from junction to Slick Rock, and eleven from where you first came to Slick Rock creek down to the
647 Tennessee River, making a total of forty seven trees from junction down Slick Rock creek to the river?

A. Yes, sir.

Q. Were all of the forty seven state line trees, along that route, apparently the same age and character, in every respect, to the state line trees on the undisputed line?

A. Yes, sir.

Q. And you found none by way of Stratton Bald, Hangover, Cold Spring Gap, and Sourwood Gap?

A. No, sir.

Q. Coming, now, to the junction again, which of those two routes if either, would the plat of 1821 carry you along?

A. The route over what is known as Big Fodder Stack.

Q. Thence, where?

A. Thence, down to the forks of Slick Rock Creek and down Slick Rock Creek to the mouth.

Q. Which would the marked trees carry you along?

A. Along the same route.

Q. Was there timber along the other route from junction by way of Stratton Bald, Hangover and Cold Spring Knob which would have been of sufficient age in 1821 to have been marked? and to have preserved their marks, if marks had been put upon them?

A. Between Stratton Bald and Hangover the timber is not very large. It is scrubby along the summit of the mountain, and along that portion of the line there would not have been suitable trees

for marking; but down below Hangover, after you reached that portion of the line, there are a number of solid trees which would have been suitable for marking, and could have been marked, and would have retained their marks for a great many years.

Q. What would have been their suitableness in 1821?

A. There are a large number of trees there that are good sized trees; two or three feet in diameter, and would have been suitable at that time for marking.

Q. When you came to Sourwood Gap, did you find any
648 trees there that would have been old enough to have been marked in 1821?

A. Yes, sir; we found a number of trees along there that would have been suitable, and would have retained their marks.

Q. Did you examine those trees with care?

A. Yes, sir.

Q. With what result?

A. We found no marks that indicated they were state line marks. There were one or two which had been marked promiscuously.

Q. Is it anything unusual to find trees marked with hacks along trails in woods?

A. Quite often you find them?

Q. What do they indicate?

A. These were not marked with any regularity and did not indicate state-line marks or land-marks.

Q. Just some man passing along the trail, and hacking about, had made those marks?

A. Yes, sir.

Q. When you got to the mouth of Slick Rock creek, where did you go from that point?

A. We crossed the river and followed the line along the Smoky Mountains North of the river.

Q. To what place?

A. To the 59th mile post. That is, I actually surveyed the line from the crossing of the road to the 59th mile post.

Q. Who was with you in going from junction, by way of Fodder Stack, to the Tennessee river?

A. Mr. H. S. Hayes, was with me, and E. E. Deputy and Pat Orr.

Q. Mr. Burns was not along?

A. No, sir.

Q. Have you compared subsequently with what he recorded at that time?

A. Yes, sir; his notes, as well as the body of the plat which he made, and the plat of 1821, and my notes were compared right along.

Q. How accurate did you find his work along there?

A. I would say that I found his work certainly the most
649 accurate of any work I ever had any dealings with; especially considering the fact that it was in such a rough country.—I have never known work to be so accurate in such a rough country.

Q. In passing from the south side of the river at the mouth of Slick Rock, how did you go from the river?

A. From the river—the river was high, the Little Tennessee and Cheoah, too high to cross in a small boat,—and I didn't have a boat, but I went around to the ferry above, and crossed at that point.

Q. Then, going north, or going up, how high above the mouth of Slick Rock before you crossed?

A. I crossed Cheoah River several miles above the mouth of Slick Rock, and I crossed the Tennessee River about six or seven miles above the mouth of Slick Rock, where the ferry is located.

Q. When you got on the other side of the river did you run to a point opposite the mouth of Slick Rock, or where did you next strike the state line?

A. Where the wagon road crosses the mountain.

Q. Marked how, on the map which you and Mr. Burns signed?

A. Station zero.

Q. From there what line did you follow?

A. A line along the summit in a southwesterly direction to the river.

Q. In going along there were you on the disputed, or admitted state line boundary?

A. It is generally accepted as the state line boundary.

Q. Did you find any marked trees indicating the state-line along there?

A. Yes, sir.

Q. How did they compare in appearance with those you found along the disputed territory on the other side?

A. The appearance was almost exactly the same.

Q. How did they compare in that regard with the trees you said you found along the route you took by way of junction, Big Fodder Stack and Slick Rock to the Tennessee river?

A. They had the same general appearance.

Q. When you approached the Tennessee River, going in that southwesterly direction, could you see Big Fodder Stack at any point?

650 A. Yes, sir.

Q. How did that point impress itself upon your mind in view of the fact that the surveyors of 1821 had gone in that direction in making their survey?

A. It appeared to be a very prominent land-mark upon the main ridge, from near the 59th mile tree; and, coming down the ridge from that direction, was the most prominent point in the direction of the line.

Q. How did you ascertain the direction of the line?

A. By sighting from various prominent summits that you would select in coming down the ridge.

Q. Sighting along in the direction of the Tennessee River, you are going toward Big Fodder Stack, a prominent peak in the line?

A. Yes, sir; it is the most prominent summit in the line.

Q. Would it be natural for surveyors, following the main ridge, to take Big Fodder Stack as an object, to which they would go on the other side?

A. Yes, sir.

Q. Would they most naturally select that, or something else?

A. They would most naturally select that.

Q. Was your attention called, at any point, as you passed from the state road down Slick Rock creek to Fodder Stack, or could you see it before you got to the river?

A. Yes, sir: you could see it a mile above the river.

Q. What appearance does it offer for facility to reach the summit on the other side?

A. Apparently it would lead them directly toward it.

Q. Would that have naturally directed the attention of the surveyors down the forks of Slick Rock, whether they followed it or not?

A. Apparently, it looked to be a direct route, and the easiest route to Fodder Stack on the other side.

Q. How did you find that line, if it were run up Slick Rock creek to Fodder Stack from this point, to coincide to what degree with the plat of 1821, which you had?

A. It coincided as closely as one could expect, according to the scale of the plat of 1821.

651 Q. What would be the line by the way of Cold Spring Knob, Haw Knob and Stratton Bald, in regard to the plat of 1821? Would that be on the line?

A. It would be entirely too far to the left or east and there would be no comparison by quite a large number of degrees.

Q. You reached the Tennessee river did you?

A. Yes, sir.

Q. From the north side?

A. Yes, sir.

Q. What did you find when you got to the river, or in that neighborhood?

A. I found a hemlock tree, not far from the bank of the river, which had been blocked on one side, and was still retaining the old marks on the east side.

Q. Do you remember what those marks were?

A. A blaze and two hacks on the west side, and was blocked on the East side.

Q. Did that have the appearance of being a state-line tree of the 1821 survey?

A. Yes, sir.

Q. Did it just look like the others?

A. Yes, sir.

Q. Standing at that tree, and looking across the Tennessee River, what presents itself to you on the bank opposite?

A. A very steep bank; almost inaccessible.

Q. How high did it rise, from observation?

A. About eight hundred feet, from observation.

Q. What was its extent up and down the Tennessee River?

A. It spread out up and down the river a half or three-quarters of a mile.

Q. What was its extent below that point?

A. About a half a mile below that point.

Q. And about the same distance above that point?

A. Yes, sir.

Q. Was that a practical route to go to the top of the ridge from that tree?

652 A. No, sir; it appeared to be too steep to be easily ascended, and especially too steep to survey a line.

Q. When you got over on the south side of the river, what did you find in regard to it?

A. We came down over it, but found it very difficult. I had to let myself down from one bush to another. It was practically impossible to survey a line up and down that bluff with a compass or transit, and chain.

Q. Running on the north side of the river, where did you go after examining the spruce pine on the bank of the river?

A. We continued down the river on the north side, looking for marked trees, and found one marked tree about half way between the spruce pine and the point on the bank opposite the spruce pine tree.

Q. How was that tree marked?

A. As a fore-and-aft tree. It was a chestnut oak with two hacks and a blaze on the west side, and two hacks and a blaze on the east side. The marks on the west side were more distinct than the ones on the east side, but it was evidently a state-line tree marked in 1821.

Q. Did you find any other marked trees on that side of the river further down?

A. No, sir. Further down the creek, it is more rocky, and down the river, immediately opposite Slick Rock, there is a solid ledge of rock.

Q. Now, which of the two would be the higher or main ridge, as between the two ridges, that you would go up from Slick Rock forks, or where you leave Slick Rock, and out by Big Fodder Stack, and out by junction, or up by Cold Spring Knob, Haw Knob, Stratton Bald, etc.?

A. The ridge up by Fodder Stack, would have a higher average elevation than the ridge up to Hangover.

Q. How is it in point of continuity—how do the ridges compare?

A. The ridge up to the Hangover is more broken, and has more gaps in it.

Q. Deep gaps or low gaps?

A. Deep gaps.

Q. From big Fodder Stack, how did you run?

653 A. Up the ridge in a southwesterly direction.

Q. Then, that is the same as the North Carolina contention now, as I understand you?

A. Yes, sir.

Q. When you came to the Tellico River, how does the topography show the state-line to run there?

A. It appears to run along the main divide, along the head of Tellico passing over the head of McDaniel Bald, and along that knob, then around to Beaver Dam Bald.

Q. That would correspond with the Tennessee contention?

A. Yes, sir.

Q. Do you know how that came to be located in that way, at Tellico?

A. It was adopted, as I understand, from a map made by the United States Coast and Geodetic survey of North Carolina and Tennessee, on which map was shown or given as reference the Ocoa District, the outlined boundaries of the Ocoa District of East Tennessee.

Q. The official plat made by Tennessee of the Ocoa District?

(Respondents object to the understanding of the witness as to how the line was located at the head-waters of Tellico River.)

A. This map to which I refer was compiled by W. L. Nichols and A. Lindenkohl in 1865, being members of the United States Coast and Geodetic Survey, from the charts given them. The land of the State of Tennessee, Ocoa District, and on that map the line was shown as running up Slick Rock creek, and thence along the undisputed line to the head of Tellico.

Q. On what document, is it said that the map used in its compilation, is the Ocoa District plat: Does it appear on the map itself, the one from which you derived the information?

A. It appears on what is known as the Lindenkohl map.

Q. Does it state on that that one of the sources of information, was the Ocoa District map?

A. Yes, sir.

(Respondents except to the testimony of the witness as to what the map shows, because the map itself or a duly certified copy thereof is the best evidence.)

654 Q. Where is that map of 1865?

A. In the Library of Congress, Washington, D. C.

Q. Is it a public document there?

A. Yes, sir.

Q. Was that the original, or a copy that you are speaking of, as the Lindenkohl map?

A. It was a copy I saw in the Library of Congress.

Q. Did you see any of the material at any point from which that compilation was made?

A. In the office of the Coast and Geodetic Survey, I saw the material from which the map was compiled.

Q. Did you see any of the Ocoa District map in that material?

A. Yes, sir the map had been copied from a drawing of the Ocoa District plat.

Q. Coming back now, if you please, Mr. Gannett, to Slick Rock creek: Will you please describe the territory through which Slick Rock runs, from the point where the creek leaves the line, according to the North Carolina contention, down to the Tennessee River?

A. It is in a rather steep gorge. That is in a valley, but there is practically no level land in that basin. It is very rough. For instance, on one side of the creek there would be a very steep bluff, which would be impossible for a man to walk around, and on the

opposite point it would not be so steep, but nothing that could be called a bottom.

Q. Is there any material descent from that point to the river?

A. Yes, sir, it is very steep going down to the river. It is a very steep descent, and at several places where the creek has cut through the rocks.

Q. Is there any altitude for those falls?

A. Those falls are twenty feet—one in particular.

Q. One, then, going from the river along Slick Rock, where North Carolina claims the line is, would be ascending all the time?

A. Yes, sir; more than a hundred feet to the mile.

Q. Which is the main ridge, as between the two contentions, the one going up Slick Rock creek to the ridge that goes up Big Fodder Stack, and thence to the junction, or the one starting at the
655 Tennessee river, where Tennessee says the line crosses, and going by way of Cold Spring Knob, Haw Gap and Stratton Bald?

A. I should consider the ridge over Fodder Stack to be the leading ridge.

Q. Which has the greater average altitude?

A. The ridge over Big Fodder Stack.

Q. Which has the greater continuity of elevation?

A. The ridge over Big Fodder Stack.

Q. Suppose you should extend from Big Fodder Stack down toward Little Fodder Stack and toward the Tennessee river, what would be the character or the remainder of that ridge?

A. The average height is very much greater than the corresponding part of the Hangover ridge.

Q. And how about its continuity?

A. The Hangover Ridge is more broken and has more deep gaps and more distinct knobs.

Q. Now, coming, if you please, to the Tellico territory: Did you, in going along the line from Jenk's Knob to County Corners, as you said you did, observe the Tellico river where you crossed it?

A. Yes, sir.

Q. What was the size of that stream at that point?

A. The actual width of the running water was about twenty feet, and it was about a foot deep in the deepest place.

Q. How did you cross it?

A. From stone to stone and in the deepest places, we laid a board across and walked over the board. There was no difficulty in crossing the stream with an instrument, and it is in between rather steep banks. The bank on the southwest side is especially steep and about twelve or fifteen feet high.

Q. Is the water divide at that neighborhood the main ridge in point of altitude or not?

A. You mean at the head of Tellico?

Q. Yes, sir; at the head of the Tellico country which is the higher ridge, the one which you traveled over or the one around the head of Tellico?

656 A. The ridge around the head of Tellico would have a greater average height than State Ridge.

Q. How is it as to brokenness?

A. Going around the head of Tellico it has a very broken appearance. State ridge has rather a uniform drop down to the river and there is a uniform rise up Jenk's ridge on the other side.

Q. Did you observe the situation at County Corners to see how a man passing along the undisputed State line from Jenk's Knob to that point would suppose the main ridge to run from there?

A. The natural course of what appeared to be the main ridge was in a southwestwardly direction along what is called State Ridge. From the County Corners the main ridge really turns at direct right angles to the southeast, and is apparently a lower and very flat divide; whereas, the State ridge is a distinct backbone, quite sharp, which would easily mislead a man in running a line, as to where the true divide is.

Q. In passing on from that point, for some distance, which is the higher of the two ridges?

A. State Ridge.

Q. There is some little misapprehension as to what you said about one thing, and I will ask you again in order to get it: I understood you to say that from Big Fodder Stack to Junction the elevation was greater by way of Junction from Stratton Bald to Tennessee river; how is it from Big Fodder Stack to Junction, as compared with Hangover to Junction?

A. From Hangover to Junction it is greater than from Big Fodder Stack to Junction.

Q. By comparison then, first from Junction to Big Fodder Stack and then from Junction by way of Stratton Bald to the river?

A. Yes, sir.

Q. Is this the sheet of those four quadrangles that is referred to in your testimony?

A. Yes, sir. This gives the relative elevation and the general appearance of those ridges.

"The Plaintiff offered in evidence the sheet above referred to, being four sheets tacked together, just spoken of by Mr.
657 Gannett, marked "Complainant's Exhibit "E." Filed with the evidence of S. S. Gannett July 8, 1910. Edmund B. Norvell, com'r."

Court adjourned until 10:30 tomorrow.

10:30 A. M., JULY 9TH, 1910.

Same parties being present representing plaintiff and defendant as yesterday.

Direct examination of S. S. GANNETT resumed.

Examined by F. A. SONDLEY, Esq.:

Q. According to this topographic sheet, which has just been introduced, how does the state line appear to run in the vicinity of Slick Rock Creek?

A. It runs up Slick Rock Creek from the mouth of the creek, then in a general southwestardly direction.

Q. To what place?

A. To a ridge which leads directly up to Big Fodder Stack.

Q. Then, what course?

A. From Big Fodder Stack it pursues a course a little east of south to a point on the west end of Stratton Bald, commonly known as Junction.

Q. Between Slick Rock Creek and Fodder Stack, how does it run?

A. Up the ridge in a southwestwardly direction.

Q. That is the same as the North Carolina contention now as you understand?

A. Yes, sir.

Q. When you come to the neighborhood of Tellico, how does this topographic sheet show the state-line to run there?

A. It appears to run along the main divides—around the head of Tellico, passing over the summit of McDaniel Bald and along Rocky Knob, then to Beaver Dam Bald.

Q. That corresponds with the contention of Tennessee?

A. Yes, sir.

Q. Did you, when you were in the library at Washington, investigate this matter of maps, and look up any of the old maps bearing on this question of the State line, at the points where it is now in dispute?

658 A. Yes, sir; I asked for all the maps they had in the library; and, so far as I know, they showed me all the maps of Western North Carolina and East Tennessee.

Q. Did you find any maps of those localities?

A. Yes, sir. As old as 1833. I think there is a new map of Tennessee by H. S. Tanner, in 1833, which showed the State line crossing the head waters of Tellico river.

Respondents except to the testimony of the witness as to what the map showed, because the map itself, or a certified copy thereof, is the best evidence.

Q. At what point did it show the line crossed? At the same point as that of your map and Mr. Burns?

A. Yes, sir; the same location is shown on this map between County Corners and Jenk's Knob.

Q. Did you find any other maps or plats. If so give us a statement of the maps you found?

A. I found a map of North Carolina and South Carolina by David H. Burr, dated 1835, which showed the same features and that the State line crossed the head waters of Tellico.

Respondents again except to the testimony of the witness for the same reason as above stated.

Q. For whom did that map appear to be made by Burr?

A. For the use of the committee on post-roads and post-offices of the House of Representatives of 1835.

Respondents again except, for the same reason, to the witness's testimony.

Q. What did the map show in regard to the location of the State line in the vicinity of Tennessee river on the southwest side?

A. It showed the line following Slick Rock Creek.

Respondents again except to the testimony of the witness for the same reason.

Q. Were there any others of those old maps which you examined?

A. Yes, sir.

Q. Give us what you ascertained, from the best search you could make?

659 A. I found a new map of North Carolina, giving roads and distance from place to place, by H. S. Tanner, 1845, showing the State line crossing the Tellico river?

Q. How about the Slick Rock vicinity?

A. I have no special note as to that.

Q. Do they show the creek or do they show that by the direction of the line?

A. They show the creek in some instances, I think.

Respondents again except for the same reason.

Q. Did you find any other maps?

A. There was a foreign map, known as Myers' Atlas, showing the same features, the line across the head of Tellico river. The map was dated 1845. Also Johnson's map of North Carolina and South Carolina, published in 1865, showing the State line crossing the head of Tellico. A map of North Carolina and South Carolina 1839. A map of North Carolina, by H. S. Tanner, 1839, and a map by David H. Burr, showing the line crossing Tellico. Also Pierce's Map of North Carolina, compiled from actual public and private surveys, 1871, showing the line along the State ridge and crossing the head of Tellico. William's New Map of the State of North Carolina, compiled from actual private surveys, 1873, showing the same features; that is the line across the head of Tellico. A new Map of Tennessee, with roads and distance from place to place, by T. Cowperthwait & Co., 1854, showing the line crossing the Tellico river.

Respondents again except to all the foregoing questions and answers because the maps themselves are public records, and said maps or duly certified copies of the same *is* the best evidence.

Q. Now, I believe you made some extension of the line North of the Tennessee river and north of the place where the State road crosses?

A. Yes, sir; I extended a line from the State road, crossing northeast about two and one half miles, to what is known as the fifty-ninth mile tree.

Q. Did you take any data of your survey along that portion of the line?

A. Yes, sir; I noted the marked trees and took other usual data.

Q. Was that data used in the preparation of this map, 660 signed by S. S. Gannett and D. B. Burns, which has been introduced in evidence?

A. Yes, sir.

Q. How does this map tally with the data which you made on that occasion?

A. The map tallies exactly with the data.

Q. Did you make any table of the State-line trees which you found in the disputed territory at any point?

A. Yes, sir; and I have a list of the trees.

Q. As I understand, you found them all along the North Carolina contention and none along the Tennessee contention: is that correct?

A. Yes, sir.

Q. Tell us where that table is?

A. It is on the extreme left hand end of this map, signed by S. S. Gannett and D. B. Burns, which has been introduced in this case.

Q. State what trees you observed that you didn't find in Mr. Burns' line. Just call attention to those you observed that Mr. Burns didn't observe in any table of his own?

A. I have a list of the trees that I observed.

Q. Give them in numbers?

A. Numbers 1 to fifteen, inclusive; 20 to 23, inclusive; 29 and 30, 33 to 35 inclusive; 36 to 41, inclusive; 44 to 55, inclusive; 57 to 73, inclusive; 75 to 83, inclusive; 85 to 89, inclusive; 92 to 99, inclusive; 101 to 104, inclusive; 107 to 123, inclusive. The numbers that I give are for the trees numbered on the plat, signed by S. S. Gannett and D. B. Burns, which has been introduced in evidence.

Q. Are those the ones observed by you, and not reported by Mr. Burns, all that you found?

A. I noticed practically all of those northeast of the State line road between Station "Zero" and Station Minus 127, plus 70.

Q. Did you notice any trees up and down the Tennessee river on the north bank that he did not report?

A. Yes, sir; tree No. 30.

Q. Do you remember any trees south of the river at any point that you found that he did not report?

661 A. I remember one, particularly, at the forks of Slick Rock Creek, which is marked "N. C. 5 M." tree No. 46.

Q. That is one you recollect now that he didn't mention?

A. That is one.

Q. Did you find all that he does mention and check them?

A. No, sir; I didn't find all, but I found several between Big Fodder Stack and Junction which he did not find. They can be differenti-ated from his table.

Q. Did you make any comparison of your work on the ground with the plat of the surveyors and commissioners of 1821 by which you could test the distance and see which of the contentions in this case was in accordance with the survey of 1821.

A. Yes, sir.

Q. Please give us that test, or those tests, if you made more than one?

A. The distence from the fifty-ninth mile tree to the south Bank of the Tennessee river, by the map in evidence signed S. S. Gan-

nett and D. B. Burns, is six and two hundredths miles and on the plat of 1821 it is six miles.

Q. You say you found it six and two hundredths miles?

A. Yes, sir, as compared to six miles by the plat of 1821.

Q. At what point on the Tennessee river?

A. On the south bank of the Tennessee river; which corresponds to the mile circles of 1821.

Q. Is that at the mouth of Slick Rock creek?

A. Yes, sir.

Q. What would the Tennessee contention of where it crossed the river, where it first reached it, show the distance from the fifty-ninth mile post?

A. About five and a half *a* miles, as is shown on the map.

Q. Then the Tennessee contention would be short by the map of 1821 a half mile, while the North Carolina contention corresponds with the plat?

A. Yes, sir.

Q. Proceed with the comparison?

662 A. From the south bank of the Tennessee river to Big Fodder Stack the surveyed distance is 6.67 miles; from Big Fodder Stack to the Junction it is 3.3 miles; total 9.97 miles. From the fifty-ninth mile tree to the Junction it is 15.99 miles, as surveyed, and sixteen miles by the plat of 1821; so that they agree almost exactly.

Q. How would it be if you take the Tennessee contention of where it crosses the Tennessee river at the point where you first reach the river and go by way of Cold Springs, Stratton Bald, Haye to Junction?

A. From the south bank of the Tennessee river to the Junction, by Hangover, is 8.51 miles as against 9.97 by the other route.

Q. Which corresponds more nearly with the map of 1821?

A. The route over Big Fodder Stack agrees within three one hundredths of a mile.

Q. Starting, then, from the fifty-ninth station and going by way of Slick Rock Creek and up to the end of Big Fodder Stack, you would have a given distance of 15.99 miles?

A. Yes, sir.

Q. Starting at the same mile-post, and coming to where you strike the Tennessee river at right angles, by way of Hangover, what is the distance?

A. 13.98 miles—a difference of 2.01.

Q. Did you make any comparison as to the distance in the Tellico neighborhood between the plat of 1821 and your actual survey there?

A. No, sir; I have not.

Q. I don't mean as between the two contentions; but as to the North Carolina contention and the map of 1821?

A. There is no definite point of comparison.

Q. You gave the distance across from County Corners to Jenk's Knob yesterday?

A. Yes, sir.

Q. Taking the plat of 1821, to the point where it crosses the Ten-

nessee river, it shows the stream to run in from the south side marked "Creek"; what stream is that in your opinion,—from the knowledge you have obtained from actually going over the ground?

663 A. It is Slick Rock Creek.

Q. Could it be any other and tally with the plat of 1821?

A. No, sir.

Q. What would you say if the contention was made that it was Cheoah river?

A. The mouth of Cheoah river is more than a mile and a half above where the line comes to the river, and to the east; and I would say that it could not possibly correspond to the creek indicated on the plat of 1821.

Q. How does it enter the Tennessee river as to angles?

A. It comes in at a very acute angle from the east, while Slick Rock flows in almost at right angles from the south.

Q. What is the general course of Cheoah river, as compared with the stream laid down as "Creek" on the plat of 1821, in the vicinity of the river?

A. The Cheoah river runs nearly southeast, and the creek indicated on the plat of 1821, runs southwest for something over a mile, and thence nearly south.

Q. I observe that, in the plat of 1821, the line passes to the southwest, up Slick Rock Creek for an apparent distance, according to the scale, of something like a mile?

A. Yes, sir.

Q. Whereas, I understand you to say you found marked trees down the ridge from Big Fodder Stack to run to Slick Rock at about five miles above its mouth?

A. Yes, sir.

Q. How do you account for that discrepancy between the plat of 1821 and the actual appearance as shown by the marked trees on the ground?

A. Of course, the man who made the plat may not have been one of the surveyors, and, not being entirely familiar with the topography of the country, he might have shown the creek incorrectly.

Q. The plat being made by a different man from the surveyor who was actually on the ground might account for that discrepancy?

A. Yes sir.

664 Q. Can you think of any other way that might have happened?

A. They may have left the creek for a short distance and then come back to the creek where the ridge takes up to the Big Fodder Stack.

Q. Suppose a person taking the notes had said, "thence running with the creek" and had forgotten to note where they left the creek, would that have accounted for it?

A. Yes, sir.

Q. This plat of 1821 does not profess to be a map of the country in every detail?

A. No, sir.

Q. What does it purport to be?

A. It is certified to be a true and correct plat of the dividing line between the said states, but it is not a map of the general topography of the country.

Q. Then, the topography, as you understand, was simply sketched in and not endeavored to be put in accurately?

A. That is my understanding.

Q. It would have been impossible to have gotten the data for the topography of this map within the time the surveyors completed their survey?

A. Yes sir, it would have taken months, or one might say years, with the facilities they had for topographic work to accurately map the country at that time. So all of the topography must have been sketched in on either side of the line.

Q. I find, as an exhibit with the answer and cross-bill of the State of Tennessee, a map or plat purporting to be a map of the leading ridges and marked, "Exhibit A" to the answer and cross-bill. Have you examined that document?

A. Yes, sir; I have examined it carefully.

Q. Have you examined it since you made your investigation on the ground?

A. Yes, sir.

Q. What are those lines dotted something like stipple work?

A. They are contour lines representing the elevation above the river.

665 Q. Is the contour there necessary to indicate that?

A. Yes, sir.

Q. How accurate do you find that map to be in comparison with your actual knowledge of the situation in respect to those contour lines?

A. I find it to be very inaccurate. For instance, at the point indicated as Slick Rock, the ridge about two miles above Slick Rock creek, the elevation indicated on this map, Exhibit A, is two or three hundred feet above the river, and the actual elevation above the river is seventeen hundred feet. At Little Fodder Stack, for instance, the elevation indicated on Exhibit A is nine hundred feet, while the actual elevation from a topographic survey is twenty-six hundred feet. At Big Fodder Stack, the elevation given on Exhibit "A", is nine hundred feet, while by an actual topographic survey it is thirty-two hundred feet. At Junction, the elevation of Exhibit "A" of all of those leads leading to the Tennessee river, is sixteen hundred feet, and the actual elevation is thirty-eight hundred feet. At Hangover the elevation by Exhibit "A" is fifteen hundred feet, while the actual elevation is four thousand feet. At Cold Spring Knob the elevation by Exhibit "A is eight hundred feet, while the actual elevation is twenty-four hundred feet. At Sourwood Gap, a mile from the Tennessee river, the elevation as shown on Exhibit A is three hundred feet, while the actual elevation is six hundred feet. Then north of the river, on the undisputed line, at a point a little less than a mile north of the river, the Elevation by Exhibit "A" is two hundred feet, but the actual elevation is seven hundred feet. At Fawn Gap, the elevation by Exhibit "A" is three hundred feet, but the actual elevation is eight hundred feet. At the summit, about

three miles north of the river, the elevation by Exhibit "A" is four hundred feet, while the actual elevation is thirteen hundred feet. At Locust Gap, the elevation given by Exhibit "A" is three hundred feet, while the actual elevation is eleven hundred feet. I would state that those elevations that I call actual elevations are taken from a topographic map of the United States Geological Survey which has been introduced in evidence.

666 Q. And all the comparisons made here are with reference to the elevation above Tennessee river?

A. Yes, sir.

Q. Examine that Exhibit "A", with reference to the actual places in respect to the topographic features of the country in that disputed territory, and see how accurate it appears to the eye in that country?

A. It represents the whole Slick Rock country as a level basin, while in reality I know from personal observation—it is very much broken, hilly and steep.

Q. Would you say, from your experience, and from your personal investigation that the topographic and physical features of the country are fairly represented by that map.

A. No, sir; I would say that it is very misleading.

Q. Does it put down all the ridges of importance?

A. No, sir; several ridges are omitted especially the one leading down from Big Fodder Stack to Slick Rock.

Q. That is the ridge that North Carolina contends the line runs on?

A. Yes, sir.

Q. And that ridge is omitted entirely, while the ridge is put in that nobody has contended the line runs up?

A. There are two ridges called, on Exhibit "A", Slick Rock ridge and Little Fodder Stack, the ridge leading up to Little Fodder Stack, about which there is no question.

Q. How correctly does it represent the meanders of Slick Rock Creek?

A. The lower part of the creek, three miles down, is represented practically all right, but from there up it is indicated as a straight line with two prongs branching off to the west. It does not represent the creek with any meanders whatever.

Q. Has the creek meanders in fact there?

A. Yes, sir; I know it has from personal observation.

Q. Material meanders.

A. Yes, sir.

Q. According to this map, Exhibit "A", the actual elevation of Big Fodder Stack appears to be nine hundred feet above the Tennessee river?

667 A. Yes, sir.

Q. And Hangover appears to be fifteen hundred feet above the Tennessee river?

A. Yes, sir.

Q. How is their relative altitude?

A. The Hangover, instead of being six hundred feet higher, is

about eight hundred feet higher, and there are similar discrepancies throughout the map.

Q. Are you speaking of the Hangover peak?

A. Yes, sir.

Q. Then, according to this map, Hangover is nearly twice as high above the Tennessee river as Big Fodder Stack?

A. Yes, sir.

Q. While in truth the proportion is much less?

A. Yes, sir.

Q. How much less?

A. Instead of being twice as much, it is the relation between 32 hundred feet and four thousand feet.

Q. Practically three fourths as high?

A. Yes, sir.

Q. The first knob on that Fodder Stack lead from the ridge would be about what distance from the Tennessee river, the first high knob?

A. The first high knob on Little Fodder Stack lead is not over a mile, very close to a mile.

Q. How far will you have to go from Tennessee river on the ridge between Bear Creek and Slick Rock creek in order to reach a point of that great altitude?

A. About three miles.

Q. The first peak then on the Hangover lead that you would reach, if you should take that course, would be how high,—the first important peak—the one at a mile distance?

A. The first peak is really less than a mile from the river. It is about eight hundred feet; and the next important peak is Cold Spring Knob, a little over three miles from the river.

668 Q. What is the first peak on the Fodder Stack ridge that you would come to?

A. The first peak within a mile would be seventeen hundred feet above the river as compared with eight hundred feet on the Hangover lead.

Q. Suppose you were to start from the Tennessee river, and going north, what would be the altitude of the first peak you would reach on the State line?

A. It would be about thirteen hundred feet above the river.

Q. What would be the altitude of the first peak, going south from the river, that you would come to on the ridge that runs up between Slick Rock and Bear Creek to Hangover?

A. That would be about eight hundred feet above the river.

Q. What would be the altitude of the first peak on the south side of the river on the Fodder Stack lead?

A. It would be seventeen hundred feet above the river.

Q. So that, standing on that peak north of the river, thirteen hundred feet above the river, then the first peak on Big Fodder Stack would be seventeen hundred feet, and you say—the one on Hangover would be lower than that?

A. Yes, sir.

Q. About how much lower?

A. About five hundred feet.

Q. Now, then, from your experience in those matters about which we have been inquiring, could you form an opinion as to which line the surveyors and commissioners of 1821 made the State line after crossing the Tennessee river as far as Junction?

A. There is no doubt in my mind that they went up Slick Rock Creek, thence up the lead to Big Fodder Stack, thence over the Rock Stack to the Junction at the west end of Stratton Bald.

Q. From the same sources of information and experience, which line did they make the State line, in your opinion, in 1821, in the vicinity of the Tellico river?

A. From what is known as Laurel Top, they went down the State ridge and crossed the head waters of Tellico river and up
669 what is known as Jenks' ridge to the main divides at Jenks' Knob.

Q. Suppose you had nothing to guide you in reaching your conclusion about that but the marked trees you found, which line would you say the surveyors of 1821 surveyed and made the line?

A. The line I have just stated, up Slick Rock creek, over Big Fodder Stack to the Junction and in the other disputed territory over Laurel Top, down State ridge and across the head waters of Tellico river, up Jenks' ridge to Jenks' Knob.

Q. Suppose you were to take as your guide the plat of 1821, what lines would you say they made the state line when you take that and go over the ground leaving the marked trees out of consideration?

A. According to the courses and distance, shown on the plat, and the general features, I would say they followed the same route—that is up Slick Rock Creek, over Big Fodder Stack over Rock Stack to the Junction; and, in the other disputed territory, from Laurel Top southwestwardly along the State ridge and across the head waters of Tellico river to what is known as Jenks' Knob.

Q. Suppose you were to take the general topography of the country here, as seen by the plat, going down the State line as undisputed to the Tennessee river in a southwestwardly direction, and then undertake to trace the line, which route would you say the commissioners took to the Junction?

A. They would naturally select the route over Big Fodder Stack.

Q. The one you have just described?

A. Yes, sir.

Q. Which would they naturally take, going on in the same way, when they got to the County Corners?

A. They could easily be mislead in taking the line down the State ridge, because it has the general appearance of the main divide.

Q. Which, would you say, they would be most likely to take from your observation of the situation there?

A. The line southwestwardly down the State ridge.

Q. Is it possible to reconcile this plat of 1821 with the
670 Tennessee contention as to the disputed places at either [illegible] where there is a dispute?

A. No, sir.

Q. How does it tally in those two places with the North Carolina contention as to the plat of 1821?

A. It tallies practically exactly.

Q. Could you locate the points on the ground which are not named on the survey indicated by the turns by that plat?

A. Yes, sir; the principal features where there are sharp angles in that plat.

Q. For instance you could tell Big Fodder Stack from that plat although it is not named on it?

A. Yes sir, from the angles in the plat and by the distance from the river.

Cross-examination.

By T. E. H. McCROSKEY, Esq.:

Q. Marked on Exhibit A with the answer and cross-bill, I see figures showing the elevation of various points; where did you get that?

A. From the testimony given by Mr. Hale in the record of the defendant's reference book, pages 244 and 245. He says there that the altitude from one series of etchings to the other represent one hundred feet.

Q. That is all you have, just what he states there?

A. Yes, sir; that is his sworn testimony.

Q. How do you know it is his sworn testimony?

A. It is contained in the record of the United States Circuit Court for the Northern District of the Eastern Division of Tennessee, in the case of David W. Belding and others versus Charles Hebard, defendant, in defendant's reference book.

Q. How do you know he was sworn in that case?

A. From the record.

Q. All you know about it is what you see in that book?

A. Yes, sir.

671 Q. And all you know about his statement is what you see there?

A. His sworn evidence; yes, sir.

Q. These lines are one hundred feet apart?

A. Yes, sir.

Q. There are no marks showing the altitude at all?

A. He shows the relative altitude—starting at the river he shows from those etchings or hachures, he referred everything to the river without giving the absolute elevation.

Q. Are you wishing to answer my question or wishing to argue the case?

A. I am simply answering your question.

Q. In giving those altitudes were you giving them from actual knowledge or from the geological map?

A. From the geological map introduced in evidence.

Q. Can you give the altitude from your own observation, experience and measurement?

A. No, sir: I didn't determine all of the altitudes on that map.

Q. Did you determine any of the altitudes on that map?

A. I had a barometer with me, and tested the relative elevation in many cases, as a test of the work shown on the map.

Q. This map, Exhibit "A," filed with the answer and cross-bill, is a fair representation of the Slick Rock basin—that is the country tributary to Slick Rock, showing the out-lines and surrounding mountains, is it not?

A. The general outline of the ridges, yes, sir, is a fair representation of the view of the Slick Rock ridges.

Q. Those few Slick Rock Ridges are properly laid down?

A. In a general way they are.

Q. Showing you the relative elevation from the Tennessee river back south and their general courses?

A. Yes, sir.

Q. So that, in that sense, leaving out the fact that it does not give all the ridges, it is a fair representation of the ridges?

A. Yes, sir; but I would like to explain.

Q. You answer my question and then you may make any explanation you like.

672 Mr. SONDLEY: Plaintiff states to the witness that he may make any explanation necessary to a presentation of the truth in answer to any question that he may be asked.

WITNESS: This map does not correctly show the mountain leading into Monroe County Tennessee.

Mr. MCCROSKEY:

Q. There is one leading ridge which it does not give—the ridge running down from Big Fodder Stack to Slick Rock Creek?

A. Yes, sir; that is not shown.

Q. There are other spurs running down also that are not shown?

A. Yes, sir.

Q. Quite a number of them?

A. Yes, sir

Q. How much higher is Stratton Bald, Hayo and Hangover than Big Fodder Stack. I am speaking, now, not from reference to the map, but from your own observation?

A. In a general way, I know that they are higher than Big Fodder Stack.

Q. How much higher?

A. About eight hundred feet.

Q. Approaching Tennessee River from the North, down to the Hemlock, a half a mile above the mouth of Slick Rock creek, as I understand, for a mile or a mile and a half, you are gradually descending toward the river in a southwesterly course?

A. Yes, sir.

Q. In that distance you have a view of the mountains on both sides of the river?

A. Yes, sir.

Q. You have a view of Fodder Stack and Little Fodder Stack?

A Yes, sir.

Q. And you have a view of Hangover and Hayo?

A. Yes, sir.

Q. You also have a view of the ridge leading down from Hangover and Hayo to the Tennessee river?

A. Yes, sir.

673 Q. You can see that ridge?

A. Yes, sir; you have a view of the whole basin and of the ridges.

Q. As you approach the river from the north, going south from the river, you see Hangover in front of you?

A. Yes, sir.

Q. Is it not the nearest mountain to you of any prominence?

A. It is one of the nearest.

Q. Is it not the nearest mountain of any prominence?

A. I would not say of any prominence. It is one of the prominent mountains in front of you.

Q. Which is the nearest to you as you approach the river, Hangover or Fodder Stack?

A. Hangover.

Q. I mean the Hangover peak as it runs down toward the river.

A. There is a ridge or bluff that but-s down to the river right opposite to where the line comes down. You can see that, too.

Q. Looking above that bluff on the southwest, you can see Hangover ridge as it rises and goes on toward Hayo and Hangover?

A. You can see the peak leading up to Hangover.

Q. Now, Mr. Gannett, going down the mountain for less than a mile, are you not approaching almost directly toward the foot of Hangover ridge?

A. Yes, sir.

Q. And the foot of Hangover ridge right in front of you, how is that?

A. It is a very steep bluff.

Q. The foot of Hangover ridge you say is a bluff?

A. The foot of the ridge which leads up to Hangover.

Q. You mean up the Hangover mountain?

A. Yes, sir.

Q. You can see that ridge all the way up as you advance?

A. Yes, sir.

Q. Going back to your map here—going to the upper left hand corner of the large map, filed an exhibit to Mr. Burns' deposition, as I understand, there is a tangent running practically due south that shows where the line leaves the turnpike road at the 101st mile tree?

674 A. Yes, sir.

Q. You began there in undertaking to survey and plat the State line, did you?

A. Yes, sir.

Q. Running back northeast?

A. Yes, sir.

Q. Did you make an actual survey?

A. Yes, sir; I did from the 101st mile post.

Q. To where?

A. To Laurel Top.

Q. Then, beyond Laurel Top, you didn't make any actual survey?
A. From Laurel Top I didn't make any survey between Laurel Top and Junction.
Q. You took somebody else's survey for that?
A. Yes, sir.
Q. Did you make an actual survey down Hangover lead to the mouth of Slick Rock to the river?
A. I didn't make any measured survey down from Hangover to the Tennessee river.
Q. As to that distance you had to take some other person's survey as correct?
A. Yes, sir.
Q. You did survey from Junction to Fodder Stack?
A. I tested the survey from Junction to Fodder Stack and to the mouth of Slick Rock.
Q. Did you make any actual survey?
A. I didn't measure every foot of the ground. I tested it.
Q. Did you survey around the head waters of Tellico river?
A. No, sir.
Q. Then, all of your knowledge with reference to the country from the Tennessee river to the Hiawassee river is made up from your own information and others?
A. Yes, sir.
Q. You have given in your deposition what you got from personal investigation and the information you gathered from other
675 parties?
A. Yes, sir.
Q. Going back up the river and Hangover, starting out, I notice your line is not straight but seems to meander considerable for a mile there.
A. I made stations at frequent intervals following the main summit of the mountain.
Q. Taking the map of 1821, we find at this turnpike road a tangent running due south to the Georgia line?
A. Yes, sir.
Q. From the north end of that tangent, we find the tangent on one mile circles, which is entirely straight, is that correct?
A. It is shown on the plat in that way.
Q. Did you undertake to run that one mile as shown on that plat?
A. We surveyed the line on the ground along the summit of the mountain the way the surveyors originally hacked the line.
Q. Did you actually run that line as indicated on that map, or try to run it, going the angle as the map shows, running a straight line in a certain direction for one mile?
A. No, sir; it would be impossible to run a straight line a mile on that mountain because the mountain has all kinds of crooks in it.
Q. The tangent shows that those commissioners did run a straight line?

A. That shows the result of their work on this scale in a general way.

Q. That is your conclusion?

A. Yes, sir.

Q. But the map does not show that, only your conclusion shows that?

A. The map shows a straight line.

Q. Did you undertake to follow the line as laid down on that map on the entire line, trying to take the map itself and survey it out exactly as laid down on that map?

A. That is not the way we went about it. My survey was along the marked line and we retraced that survey to see how it compared with the lines of the plat.

Q. You did not undertake to make a survey of any plat?

A. I did not.

676 Q. You did not undertake to follow any one of those lines as indicated on that map?

A. No, sir; not in that way.

Q. But you did make a survey of what you understood to be the main ridge?

A. Yes, sir.

Q. And, paying no attention to the map of 1821, but trying to follow what you understood to be the main ridge?

A. I had a copy of the map of 1821 with me.

Q. You didn't follow that map?

A. No, sir. By the method you suggest I would have to multiply that map several times. This map is on a scale of two and a half miles to the inch and you would have to enlarge it twelve thousand eight hundred times.

Q. You didn't try to enlarge it twelve thousand eight hundred times?

A. No sir.

Q. You took your own method?

A. Yes, sir; to get a comparison along the surveyed line, as marked, and the result as shown on this map.

Q. You have platted your survey and the survey of others?

A. Yes, sir.

Q. Instead of undertaking to run and replat the map of 1821?

A. Yes, sir. Of course, if I had the original notes, showing the courses and distances, I could have made that map on any scale I pleased.

Q. Can you take the map of 1821, without the notes, and go to Pigeon river and get the exact calls from the map itself, taking the report of the commissioners, and locate the line by that map?

A. I could get the approximate calls; I could not get the exact calls, but could locate the line with the aid of the map.

Q. In other words, you think the map shows a general course following the top of the mountain, and following the mountain in that way, you could locate the line?

A. Yes, sir.

Q. This map of 1821 shows that the line follows the ridge, does it not?

677 A. Yes, sir; in most every case excepting up Slick Rock Creek.

Q. Please tell us what the map shows there?

A. It shows that they followed up the creek for a distance of something over a mile on that scale.

Q. Do you insist that it shows that they followed up the creek?

A. Yes, sir; the way the map is generally interpreted, it shows that the line followed up the creek?

Q. Do you insist that they adopted the creek as the line or that they went in a general course up the creek a short distance?

A. They followed up the creek, I should say, about a mile according to the map.

Q. It shows that they went up the creek about a half a mile and then went off of the creek and then went back to the creek and then went away from the creek at an angle, does it not?

A. In a general way.

Q. Don't the angles actually show that?

A. This copy is so faint I cannot interpret it exactly. It appears that they followed up the creek possibly a little more than a half a mile and then left the creek to the left.

Q. Looking at it closely, it seems to run up the meanders of the creek a half a mile and then it leaves the creek bearing off of the creek and then goes back toward the creek and then leaves the creek again?

A. Yes, sir.

Q. You spoke of seeing a fore-and-aft tree on the north side of the Tennessee river, between where the hemlock is on the bank of the river and the mouth of Slick Rock Creek?

A. Yes, sir.

Q. Shown as tree No. 30 on the map filed by Mr. Burns, is that correct?

A. Yes, sir.

Q. Will you describe that tree, particularly as to its locality and the kind of a tree it was?

A. It is a chestnut oak, tree No. 30, thirty inches in diameter, leaning toward the river marked with two hacks and a blaze on the west side and two hacks and a blaze on the east side. The

678 marks on the east side are not so distinct as those on the west side.

Q. After crossing the river, at what you call the mouth of Slick Rock creek, there are some etchings or hachures on the west side of the line near the river; what does that indicate?

A. In that case, I should say, they indicate a bluff. That is a rough etching.

Q. In other words, you would think they were passing under a bluff or over a bluff or against the side of it?

A. Apparently against the side of it. The bluff comes down to the creek and then passes up along the side of it.

Q. At any rate those etchings show a bluff, a mountain or something else?

A. Yes, sir.

Q. It does not show a stream?

A. The line is shown as a stream.

Q. The etchings do not show a stream?

A. No, sir.

Q. Etchings never indicate a stream?

A. Not that kind of etchings.

Q. Now, taking the map of 1821, and looking at it without going upon the ground, and reading the report of the commissioners, examining the map with reference to that, will you say that the map went around the head of Tellico river?

A. I would, according to the indications on the plat.

Q. There can be no question, so far as the map is concerned, and reading the report of the commissioners about that?

A. No, sir.

Q. You have explained why you do not think that is correct?

A. Yes, sir.

Q. I understood you to say, in your examination in chief, that the ridge running around the head waters of Tellico river was, in a uniform way, higher than State ridge and the Jenks ridge; but that the State ridge at that point was higher than the ridge running around the head waters of Tellico river, is that correct?

679 A. Yes, sir. The state ridge at Junction, from Laurel Top, is quite a good deal higher where it slopes down to the Tellico river.

Q. Then, you crossed over on the other side and came to what you called Jenks ridge?

A. Yes, sir.

Q. But that is the divide of the waters going around from the waters of Tellico river?

A. Yes, sir.

Q. The divides of what streams?

A. I am not familiar with the names of the streams on the other side.

Q. Personally, you do not know the name of the streams?

A. No, sir.

Q. As a matter of fact, you never went around the head waters?

A. No, sir; there were no marked trees around that divide.

Q. Did you go around it at all?

A. I have been in the country to the east of that.

Q. Did you follow that dividing ridge around?

A. No, sir; I traveled through the country to the east of the divides.

Redirect examination.

By F. A. Sondley, Esq.:

Q. Now, Mr. Gannett, you spoke of going to the 101st mile tree, and you said that, according to the plat of 1821, it appeared for

some distance toward the northeast, as you go, something like a mile to be a straight line on that plat?

A. Yes, sir.

Q. Is that a disputed place at all or is it admitted to be the State line?

A. It is the undisputed portion of the State line.

Q. How have they platted that undisputed place,—so as to make every minute turn or aggregate number of turns in one straight line?

A. There are a number of ...gles in that one straight line.

Q. Is that unusual?

A. No, sir.

Q. Suppose you plat the entire courses on the map of 1821, showing every minute angle in the ridge which they were following, could it have been put on a plat ten times the size of that one to show every minute turn in the ridge?

680

A. No, sir.

Q. You have to adopt a very large scale in order to do that?

A. Yes, sir.

Q. Do surveyors in platting and marking lines in such cases, where they are meandering the ridge across, or a river bank, or a road that turns very frequently in small quantities at a time, how would they plat that? Would they take some general bearing from one point to some other point on the line some distance away and give that as the direction?

A. Yes, sir.

Q. How would they mark it on the ground?

A. They would mark the meanders exactly.

Q. Is that the proper system for cartography in surveys of this character as done at that time?

A. Yes, sir.

Q. Is it not the most accurate way and the most advantageous way of surveying and platting practically all of those old lines?

A. Yes, sir.

Q. Does that militate against the general accuracy of the plat or the truthfulness of the plat?

A. No, sir.

Q. Does it mislead anybody, certainly — anyone who is acquainted with such matters?

A. No, sir.

Q. Did you have any misgivings in following the meanders of the ridge where that line followed the meanders?

A. No, sir.

Q. Under the given conditions, I want to ask you whether it is a proper interpretation of that map to follow the ridge?

A. Yes, sir.

Q. If there had been no marks, you still say that it was the intention to follow the ridge?

A. Yes, sir.

681

Q. You say in some places the plat seems to take a straight direction where there are really some meanders, but you don't

understand that they abandoned the meanders to make marks upon the ground where they could make marks?

A. Yes, sir; that is my understanding.

Q. Suppose you should, however, undertake to actually run a line on the creek, even at all hazards, so as to correspond with those courses and distances given, you would not get materially off the State line anywhere, you would swing off on one side and swing back on the other?

A. You would travel substantially the same course. The errors would balance to a large extent.

Q. You said that, in regard to crossing the Tellico river, judging from the map of 1821, the line between the states went around the head of Tellico river?

A. Yes, sir.

Q. But if you were to actually go around the head of Tellico river that would involve a departure apparently from the courses and distances of the plat?

A. Yes, sir; very material departures from the plat.

Q. That would not be permissible under the interpretation you were talking of?

A. No, sir.

Q. You spoke of not having made an actual survey, yourself, from Junction to Big Fodder Stack and on down Slick Rock Creek to its mouth, but that you tested the notes of the survey which you had?

A. Yes, sir; I had the previous notes made by Mr. Burns and the plat of his work.

Q. And, where you made the tests, how did they work out?

A. They agreed very closely. At certain places I measured the distance on the ground, and true course of his line.

Q. You say his notes were correct?

A. Yes, sir.

Q. Did Mr. Burns know before hand where you were going to make those tests?

682 A. No, sir; he was not with me at the time and I made those tests independently.

Q. Were the tests satisfactory to your mind or not?

A. I tested the survey and proved its correctness.

Q. Did you make the tests in the field to see what he had done?

A. Yes, sir; I wanted to prove to my own satisfaction whether or not the work was correct so I would not have to make the survey in detail.

Q. Did you make any similar tests of the Tennessee claims from Junction down to Hangover?

A. No, sir.

Q. Did you have any notes of that?

A. No, sir.

Q. Did you make any tests to tell you whether that was right or not?

A. We had the geodetic co-ordinates of Hayo to Fodder Stack and from these I computed the air line distance from one to the

other and found that distance to be 19,789 feet, the same distance as computed from Mr. Burns' notes gave 19,795 feet, a difference of only six feet in nearly four miles. That proved to my satisfaction that the survey around the Slick Rock basin was absolutely correct or correct with an error of six feet.

Q. You were asked on cross-examination if the plat of 1821, from the Tennessee river south, did not show a departure from what is marked "Creek," and you said that, from a very careful inspection of the blurred copy, it apparently went off in one direction?

A. Yes, sir.

Q. I ask you to take that plat, considering the amount of care with which it was prepared, and see if it is not a proper interpretation of that plat meaning for it to follow up the creek?

A. Yes, sir.

Q. Would that be a correct interpretation of the principle of interpreting old maps as from your experience that map should be interpreted?

A. Yes, sir.

Q. Now, about this hachure, do you *understand* that was put in the plat of 1821 opposite Slick Rock creek by any survey, or from a general etching?

683 A. I would say that it was sketched in. They could not have possibly made a survey of that country within the time allotted.

Q. That hachure might have been sketched in at a slightly wrong place with great probability?

A. Yes, sir.

Q. You spoke of the actual water divides at Tellico going around what this plat of 1821 seems to show that they did go; did you know of any call or direction anywhere that caused the absolute water divide to be sought in making that State line? where there is a divide other than the main ridge?

A. My recollection is that the call was for the main ridge.

Q. Is the main ridge always the water divide, from your knowledge of the Allegheny country?

A. No, sir.

Q. How about the French Broad River—does the mountain in which it rises reach as great an elevation as the mountain through which it breaks on the Tennessee river?

A. The mountain in which the French Broad river rises has not as great an elevation as the mountain through which it cuts.

Q. What is your knowledge of the Allegheny country in respect to streams cutting through high mountains than those in which they originate?

A. They very often do that.

Q. Would it be possible in running the state line from Virginia to Georgia to follow the water divide and make it anywhere near Tennessee?

A. No, sir.

Q. In fact, the line between North Carolina and Tennessee is cut across by various streams, is it not?

A. Yes, sir.

Q. Can you mention any rivers which cut through it, besides the Tennessee river you have spoken of?

A. I remember the Pidgeon river and the Highwassee river and the French Broad river.

684 Q. How about Nollachucka?

A. Yes, sir; it cuts through it also.

Q. Now, the map of 1821 was accompanied with the report in words, was it not?

A. Yes, sir.

Q. That report required in going along this prong of the line to follow the ridge?

A. Yes, sir; to follow the main ridge.

Q. Then, with that report and this map, you would go over those spaces of apparently a straight line for a mile as the map showed, but you say you must go from point to point on those lines along the ridge?

A. Yes, sir.

Q. Now, you were asked if you could start at Pidgeon river, and, by means of this plat, run the line between the states of North Carolina and Tennessee. I ask you if you could not do that if you were at the point upon the ground?

A. Yes, sir; I could.

Q. Then, what you found upon the ground, together with this map, would show you the line?

A. Yes, sir.

Q. There is nothing misleading in that plat?

A. No, sir.

Q. Should the plat be considered in connection with the trees marked?

A. Yes, sir; the actually marked line-trees.

Q. And is it upon those facts that you have reached the conclusion that the true boundary line between North Carolina and Tennessee is where North Carolina claims it to be?

A. Yes, sir.

S. S. GANNETT.
By EDMUND B. NORVELL,
Notary Public & Commissioner.

685 In the Supreme Court of the United States.

No. —, Original.

THE STATE OF NORTH CAROLINA, Complainant,
vs.
THE STATE OF TENNESSEE, Defendant.

The further cross examination of S. S. Gannett, a witness for the complainant, resumed pursuant to agreement at the Hotel Raleigh in the city of Washington on the 19th day of January, 1911, and the

deposition of O. Welti, witnesses for the State of Tennessee, taken before Mr. Frederick S. Tyler, Notary and Commissioner, the testimony of the witnesses being taken down in shorthand, by agreement, by Mr. Alexander H. Galt and Mr. *Mr.* Frank M. Young, of the firm of Galt & Young, with the further understanding and agreement that the names of the witnesses may be signed to their depositions by the Commissioner, Mr. Tyler. Formal caption and certificate are waived by both parties.

Appearances: For North Carolina, Mr. C. B. Matthews; for the State of Tennesee, Charles T. Cates, Jr., Attorney General.

S. S. GANNETT, having been duly sworn, further deposed and said:

By Mr. CATES:

Q. Mr. Gannett, I believe you stated during your examination in chief that upon request of the Attorney General of North Carolina you were designated by the United States Geological Survey to go upon the ground and endeavor to locate the line between the States of Tennessee and North Carolina, south of the Little Tennessee River. Is that correct?

A. Yes sir.

Q. Did you have any conference with the Attorney General of North Carolina?

A. No sir; I had a conference with the counsel for the State of North Carolina, that is, General Davidson, in Asheville, N. C. The understanding was reached by correspondence that it would not be necessary for me to confer with the Attorney General himself, but with the counsel for the State.

Q. Did you have any conference with any of the counsel appearing for North Carolina, in this law suit before you went to Asheville?

686 A. No; not before I went to Asheville. I met General Davidson at Asheville. I went there especially to see him first before I began the work.

Q. You had no conference with General Davidson or Mr. Mat--hews in Washington?

A. No sir. I was introduced to Mr. Matthews in Washington in spring of 1910.

Q. Did you have any conference in Washington with Mr. William R. Hopkins?

A. Yes sir.

Q. Now North Carolina has not been paying you for your services, has she, Mr. Gannett?

Mr. MATTHEWS: I object to that as irrelevant and incompetent.

A. General Davidson paid me for the witness fees.

Q. Who paid you for you- expert services?

A. Mr. Hopkins paid me for the field expenses including my services— that is in the field.

Q. Including your services as an expert witness?

A. No sir, including my services in the field. I say, General Davidson paid me for my services as a witness—services and expenses as a witness.

Q. You appeared as an expert witness on behalf of North Carolina?

A. Yes sir.

Q. What fees were paid you as such expert witness?

Mr. MATTHEWS: I object to that as incompetent and irrelevant.

A. $25 a day and expenses.

Q. When did you first meet Mr. D. B. Burns?

A. It was on April 20th, 1910, in Asheville, N. C. We took the train from Asheville to Murphy on that day, as I remember

Q. You had a conference with Mr. Burns on yesterday here in Washington, did you not?

A. Yes sir, we met here yesterday.

Q. Mr. Burns is present at the taking of this testimony, I believe?

A. Yes sir.

Q. After your testimony had been typewritten by the stenographer taking it at Asheville, a copy of it was submitted to you for correction?

A. Yes sir.

Q. You corrected it?

A. I did.

Q. Have you made all the corrections in that testimony that you desire to make?

A. Yes sir, so far as I know. The statements I think are all corrected, as recorded by the stenographer, with the exception of possibly one that I noticed yesterday. I was reading my testimony over again yesterday and there was one statement there I think that was incorrect.

687 Q. What was that statement that was incorrect in the testimony as it now appears?

A. It is on page 377 in this volume.

Q. What is at the top of the page?

A. The typewritten page is marked 24, and then in ink it is marked 377, of the bound volume. At the bottom of that page is this question: "Would it be possible to take that plat and follow the undisputed line as close as you follow it and go around by Jenks' Knob to McDaniels Bald?" The answer recorded here is "Yes sir"; the correct answer is "no sir."

Q. Now what plat was referred to in that question?

A. That is the Plat of 1821.

Q. Your answer to that interrogatory was vital, was it not, Mr. Gannett?

A. Yes sir.

Q. How did it escape your examination of your testimony, when you went over it to correct it, that you had answered "Yes sir" to that question, instead of "No sir"?

A. Well, I do not remember excepting that I did not have the plat with me at the time. I was in the field engaged on another boundary survey and did not have the copy of the plat with me.

Q. But when you were being examined at Asheville in regard to that plot, a copy was there present and referred to a number of times in your testimony, was it not?

A. Yes sir.

Q. Now as a matter of fact Mr. Gannett, if you follow the main divide of the waters, you would go around by McDaniels Bald, would you not, and therefore entirely around the headwaters of the Tellico River.

A. Yes sir, there is no doubt about that.

Q. That would conform to the map of 1821 at that particular point in this, that the map shows that the line runs around the headwaters of the Tellico River, would it not?

A. So far as the drainage is concerned, it shows that it goes around the headwaters of the Tellico River, although according to direction actually it does not go around the headwaters of the Tellico River.

Q. But that map shows that all of the Tellico River including its headwaters, is on the Tennessee side of the line, does it not?

A. Yes sir, according to the drainage.

688 Q. Does it show that the Telico River breaks through the line at any point?

A. No sir.

Q. It does not?

A. Not according to the drainage as shown.

Q. And it also shows that at that place the line between the States is on the top of the main or leading ridge does it not?

A. According to the drainage, as shown, yes sir.

Q. And that that main or leading ridge was followed by the state line, and runs around and not across the Telico River?

A. Yes sir, you have a copy of that.

Q. So that the map of 1821, in so far as it shows all of the waters of the Telico River to be on the Tennessee side of the line, does conform to a line which runs around McDaniel Bald?

A. McDaniel Bald is not shown on that plat of 1821.

Q. I quite understand that the name "McDaniel Bald" is not written on the plat, but a line running from Jenks' Knob eastwardly and northeastwardly around and over McDaniel Bald would throw on the Tennessee side all the waters of the Telico River, would it not?

A. Yes sir, so far as the drainage is concerned.

Q. Who pointed out this mistake—this supposed mistake—in your testimony yesterday?

A. Nobody. I noticed it in reading over the testimony several days ago.

Q. A carbon copy of your testimony, as taken at Asheville, was furnished to the State of Tennessee, and I note at different places in this copy before me corrections in ink.

Please tell me if you made those corrections—say, this correction on page 378. Is that your handwriting?

A. I did not make these corrections, that is, on this identical copy. I undoubtedly made the corrections on another copy of this same testimony. As I say, I was furnished with a copy of this in the latter part of July and went through it and made such corrections as I thought were absolutely necessary.

Q. And you recognize these corrections?

A. Yes sir.

Q. As having been made by you?

A. Oh, yes sir, although they are not actually in my handwriting.

Q. In this particular copy you mean?

A. Yes sir.

Q. Now, judging from your examination in chief, before
689 you went to Asheville for examination, you visited the map department of the Congressional Library, did you not?

A. Yes sir.

Q. And then undertook to testify in regard to the contents of all the maps there relative to this land?

A. Well, yes sir, certainly a large number of the maps. I would not say all of the maps.

Q. When you were making the examinations of the maps there, did you take a memoranda of what you found?

A. Yes sir.

Q. And you were testifying from that memoranda?

A. Yes sir.

Q. I call your attention to your testimony as it appears at the bottom of page 397 in the book of testimony furnished the State of Tennessee, where you were testifying in regard to a map supposed to have been made by David H. Burr, about the year 1835, and in which you stated that this map appeared to have been made by Burr for the use of the Committee on Post Offices and Post Roads of the House of Representatives of 1835?

A. Yes sir.

Q. And then you were asked this question: "What did the maps show in regard to the location of the State line in the vicinity of the Tennessee River on the southwest side? Your answer is: "It showed the line following Slick Rock Creek."

A. Yes sir.

Q. That is your answer is it?

A. That is the answer, yes sir.

Q. Do you mean to say that that Burr map shows that the line ran up Slick Rock Creek, Mr. Gannett?

A. This says 1835. According to my original note it was 1839, and it showed the State line crossing the Telico.

Q. But as a matter of fact that map does not show anything about Slick Rock Creek, does it?

A. I have no record of it here in my original note book.

Q. Then why did you say it showed the line following Slick Rock Creek, Mr. Gannett?

A. It must have been a mistake. I see the date is wrong. According to my original note it was 1839, and the stenographer probably misunderstood the date "39" sounding like "35."

Q. But the date has not anything to do with your answer which was "It showed the line following Slick Rock Creek," has it?

A. No, sir, the date has not.

Q. Now you were asked these questions and the following answers were given by you, as they appear on page 398 of this record:

690 Q. Were there any others of those old maps which you examined?

A .Yes sir.

Q. Give us what you ascertained from the best set you could make.

A. I found a new map of North Carolina giving roads and distances from place to place by Tanner, in 1845, showing the State line crossing the Telico River.

Q. How about the Slick Rock vicinity?"

As it was written down by the stenographer the answer is as follows, is it not:

Q. I have no special note as to that, but I can say that all of these maps showed the line up Slick Rock Creek."

A. Yes; then I corrected that later.

Q. But that is the way you gave the answer to the stenographer, was it not?

A. I did, and I say I corrected it later. I immediately recognized——

Q. Leaving only this part of the answer which you had given to the stenographer, "I have no special note as to that"?

A. Yes sir.

Q. And cutting out that which you did say to the stenographer as follows, "but I can say that all of these maps showed the line up Slick Rock Creek"?

A. Yes sir, I recognized that that statement was too general, and that all the maps did not show it.

Q. Did you not know that when you were down at Asheville?

A. Yes sir, I say the statement as made at the time was too general.

Q. Did you not know that when you were being examined that all of those maps did not show that fact, Mr. Gannett?

A. Yes sir, as I say I corrected the statement later.

Q. Then why did you say that all of these maps showed that the line ran up Slick Rock Creek?

A. It was simply a slip of the tongue, I really did not intend to make that statement.

Q. The next question is: "Do they show the creek or do they show that by the direction of the line"? And your answer as written down by the stenographer, and as given by you to the stenographer, was: "They show the creek in every instance, I think".

A. Then I corrected that later to "some instances."

Q. I understand; the answer as it now appears is: "They show the Creek in some instances, I think," but as originally given by

you, and as written down by the stenographer the answer
691 was: "They showed the Creek in every instance, I think."

A. Yes sir. The phrase given was qualified by "I think," after considering it, though I knew that it was not given in every instance.

Q. But the answer as given by you originally, and as written down by the stenographer, was entirely consistent with your last answer above that, was it not?

A. Yes sir.

Q. In other words, your last answer above that was: "I have no special note as to that, but I can say that all of these maps showed the line up Slick Rock Creek"; and then being asked the further question, you answer further and stated, "they show the Creek in every instance, I think".

A. That was the way it was originally written.

Q. And the way it was originally given by you?

A. Well, apparently according to the record of the stenographer, I corrected the statement, though, later.

Q. Then you were asked a further question, immediately following the last answer, which you corrected; "did you find any other maps"?—and your answer, as originally written down by the stenographer, and as given by you was as follows: "There was a foreign map known as the Meyers Atlas, showing the same features, that is the line up Slick Rock Creek and the line across the head of Telico River, the map was dated 1845." That is part of your answer as originally given?

A. As originally written or reported, yes sir.

Q. Then you struck out of it this: "that is, the line up Slick Rock Creek and"?

A. Yes, sir; I distinctly remember striking that out.

Q. Now will you please tell us how it came that your mind was so clear and positive in your original testimony that all of those maps showed a line running up Slick Rock Creek, when in fact not one of them shows Slick Rock Creek or refers to it in any way?

A. Well the original answer was qualified by the phrase "I think", but when I had a chance to refer to my notes and verify the statement, I found out that the statement was not correct; that all of the maps did not show the line up Slick Rock Creek.

Q. Did you have your notes there with you at Asheville?

A. I had them in the city, yes sir.

692 Q. You, at that time, were testifying as the expert witness called in the name of the complainant, that the line did run up Slick Rock Creek, were you not?

A. That was one of the reasons.

Q. And you were citing all of these different maps as confirming and corroborating your theory of where that line should run, were you not?

A. Yes sir.

Q. And in respect of every one of those corroborations by map that you referred to, you were mistaken, were you not?

A. No, sir, not every one. I say some of the maps showed the line up Slick Rock, and some across the head of Telico.

Q. I am talking about these maps to which I called your attention. You were mistaken in stating that they showed a line up Slick Rock Creek thereby confirming your theory of where the line was run?

A. Well, the map, for instance, that showed the line across Telico—perhaps a given map would not show it up Slick Rock; that is, it might not show Slick Rock Creek at all.

Q. I am not talking about the Telico now, Mr. Gannett. Let us get back to Slick Rock Creek, to which your attention was particularly directed by the several questions asked you, and to which I have called your attention. In every single one of those instances which you cited as confirming your theory of where the line ran up Slick Rock Creek the confirmation being by map, as you testified—you were mistaken, were you not?

A. I would not say in every instance.

Q. In all those instances to which I have called your attention, then, you were mistaken.

A. Well, yes, I think that is correct, but just as soon as I had a chance to correct my testimony, I made the correction. I realized that the statement was not correct as given, and I corrected the statement just as soon as I had an opportunity to.

Q. Now look at the bottom of page 398 and the top of page 399 a part of the same answer from which we have quoted. I find you as stating further: "Williams' map of the State of North Carolina, compiled from actual private surveys, '73, showing the same features, that is the line up Slick Rock Creek and across the head
693 of Telico." That is the way it was written down by the stenographer, is it not?

A. Yes sir.

Q. And then you struck out of the answer as written by the stenographer, the following: "Up Slick Rock Creek and"?

A. Yes sir, I struck it out.

Q. Your mind was still directed to the point of Slick Rock Creek there, was it not?

A. Well, it was in the beginning, yes sir.

Q. And as you originally gave your answer to the stenographer you said that that Williams map of 1873 showed the line running up Slick Rock Creek, did you not?

A. Well it is recorded that way.

Q. Is that not the way you stated it?

A. I cannot swear that it was, but that is the way it was recorded, and I changed the statement when I had an opportunity.

Q. You had examined these maps before you went to Asheville?

A. Sometime before, yes, sir.

Q. When, according to your notes?

A. I do not know that I have the exact date. It was the latter part of June, according to my recollection. I have no record of that date.

Q. The latter part of June, 1910?

A. Yes sir.

Q. And it was immediately before you went to Asheville to testify, was it not?

A. Yes sir, I testified, July the 8th and 9th.

Q. Mr. Gannett, I lay before you a certified copy of the map of 1821, and I ask you to state if from the point where the state line, according to that map, begins near Big Pigeon River and southwesterly to the Little Tennessee River, or as it is called on the map merely Tennessee River, does not show that the line was run on the extreme height or summit of a main ridge dividing the waters all the way from Pigeon River to the Tennessee River?

A. Well, according to the drainage it does. According to the Hachuring or coloring, one might think that the line was really just east of the main summit—that is, its being colored and hachured only on one side, but as I say, according to the drainage you would accept it as following the main divide or water shed.

Q. Have you ever run that line from Pigeon River to the Tennessee River?

A. Not all of it. I have run a line from mile post 59—mile tree 59—just about six miles northeast of the Little Tennessee River southwestwardly.

694 Q. Have you ever read the cession act from North Carolina to the United States Government?

A. Sometime ago, I read it, yes sir.

Q. I call it to your attention, as set out in the first paragraph of the answer and cross bill of the defendant in this case, and read it to you. Then I read and quote from the cession act, the next call: "Thence along the highest ridge of the said mountain to the place where it is called the Great Iron or Smoky Mountain; thence along extreme height of said mountain to the place where it is called the Unicoy or Unaka Mountain between the Indian Towns of Cowee and Ochota; thence along the main ridge of said mountain to the southern boundary of the State." Now I will ask you to state, Mr. Gannett, if this map of 1821 does not purport to show the Great Iron or Smoky Mountain?

A. Yes sir, it does.

Q. Between the Pigeon River and the Tennessee River?

A. Yes sir.

Q. Then a line running from the Pigeon River to the Tennessee River along the extreme height of said Great Iron or Smoky Mountain would conform to the cession act, would it not?

A. Yes sir, that is the undisputed line.

Q. And a line following the extreme height of the Great Iron or Smoky Mountain to the place where it is called Unicoy or Unaka Mountain, would also conform to this cession act, would it not?

A. Well, with the exception of where it follows up the creek, that is, the map shows the line up a creek part of the way.

Q. I did not ask you what the map showed; I asked you if a line run on the extreme height of the mountain from Pigeon River

to where it is called Unicoy Mountain would not conform to this cession act?

A. Yes sir, a line if it was run that way, would conform to the cession act.

Q. Now I will ask you to state if this map of 1821 does not show the line running from the river to the Unicoy Mountain on the main ridge or divide of the waters?

A. Well, with the exception that just south of the Little Tennessee River, it follows up a creek about a mile and a half right near the creek.

Q. At the end of the second mile, as indicated by a circle on this map, it appears to be the top of the mountain again does it not?

695 A. Yes, sir; merely on top.

Q. And from that second mile circle south of the river all the way around to where Unicoy Mountain is written on the map the line appears to be on top of the main ridge and the ridge which divides the waters in Tennessee from the waters in North Carolina, does it not?

A. It appears to be yes sir.

Q. Now you have had a copy of this map of 1821 for a good while have you not?

A. I had a copy when I was making the survey last spring, in April and May.

Q. Between these mile circles—if the circles indicate miles—I see at various places black dots. What do they indicate?

A. They indicate angles in the line as run.

Q. You mean change in the course?

A. Change in the course, that is another way of expressing it.

Q. Then you would say that the line which crosses the Little Tennessee river crossed it on a straight line would you not, as shown on this map?

A. Yes, they took one direct sight from the bluff north of the river, clear across the river.

Q. Now then between the first and second circles north of the river I see one, two, three little black dots.

A. Yes, sir.

Q. Do you suppose that they indicate three changes of courses or different angles in that line.

A. Yes, sir; that is they are probably three small summits where the change in the course was made.

Q. Then between the second and third mile circles north of the river I see just one black dot. You would say that that indicates just one change in the course in running that line.

A. Yes, sir; as drawn it would be a very small angle or change in the course in that particular case.

Q. Now, Mr. Gannett, you commenced your opperation at the point which is supposed to be one hundred and one miles from Pigeon River and on a turnpike.

A. That is a so called turnpike. Yes sir. It is the roughest road I ever saw in my life.

Q. Did you run the line south from that point which is called one hundred and one miles from the beginning.

A. Yes sir; Mr. Burns and myself ran the line jointly southward.

Q. How far did you run it?

A. I think it was about three fourths of a mile; just far enough to get the general direction and to be able to identify the line.

696 Q. And I believe you said you found a marked four and aft tree within that run.

A. Yes sir. The tree was blocked there and identified as being an original marked tree.

Q. You did not run to the Hiwassee river.

A. No sir.

Q. Now give us the course and distance of the line that you ran south of that one hundred and one mile.

A. The first course south——

Q. Now I understand you are calling the course of the line southward from the one hundred and first mile.

A. Yes sir.

Q. All right; Give it to the Stenographer.

A. South five degrees and twenty-four minutes west seven hundred and thirty four feet.

Q. The next course.

A. The next course south 5 degrees and 24 minutes 76 feet west.

Q. South 5 degrees and 24 minutes.

A. West 76 feet; third course, south 6 degrees and 10 minutes west, 266 feet; south 5 degrees and 30 minutes west, 3000 feet. That is as far as we went. It was something over three quarters of a mile.

Q. Then you went back to the 101 mile distance and ran the line eastwardly.

A. North eastwardly. Yes sir.

Q. Who was with you.

A. Mr. Burns.

Q. Now give me the calls of the running of that line.

A. For the whole line you mean? There are several hundred stations.

Q. Give it to be for the first mile, reversing from the 101 mile tree or mile stone.

A. That is from the 101 miles north eastward?

Q. Yes.

A. I have it recorded, according to what is called the true azimuth 327 degrees and 47 minutes, 354 feet.

Q. Now give us that by so many degrees north or east.

A. It is south 32° 13' E. 354 Feet, next south 63 degrees and 51 minutes east, 346 feet; the next is south 71 degrees 23 minutes east, 117 feet; north 55 degrees 17 minutes east, 186 feet; north 39 degrees and 31 minutes east, 453 feet; north 39 degrees, 31 minutes east, 156 feet; north 42 degrees and 1 minute east 403 feet; south 75 degrees and 0 minutes east, 327 feet; north 75 degrees 55 minutes east 403 feet; north 12 degrees and 9 minutes east, 427 feet; north 72 degrees 44 minutes east, 144 feet; north 35 degrees 16 minutes

east, 566 feet; north 52 degrees 53 minutes east, 252 feet;
697 north 52 degrees 4 minutes east, 300 feet; north 45 degrees 56 minutes east, 581 feet; north 37 degrees 56 minutes east 313 feet; north 21 degrees 21 minutes east 432 feet. That is a little over a mile. Do you want any more.

Q. No, about how many stations are there between that hundredth mile and Jenk's Knob,—an estimate of them according to your running.

A. Say 164 from 101st mile.

Q. Now Mr. Gannett I will ask you to make out and file a copy of the notes of your running of that line from the 101st mile stone so called, northeasterly to Laurel Top.

A. Very well I will do it. (The paper is marked Exhibit Z.)

Q. And let the notes show the course by degrees north and south not by the azimuth.

A. Yes sir.

Q. Now that mile between the one hundredth mile circle and the one hundred and first mile circle—if we call the one hundred and first mile circle the one from which the line starts due south, or supposedly due south to the Georgia line, is a straight line, is it not?

A. It is shown on this plat as a straight line.

Q. The line that you have called off for us is not anything like a straight line, is it?

A. No sir.

Q. Part of it runs north east and part of it south east.

A. Yes sir.

Q. Mr. Burns was with you in running that line?

A. Yes sir; we followed the ridge all the way around, following every crook in the summit.

Q. That is the way to run a mountain top, is it not?

A. That is the way to run it carefully and accurately, Yes sir. It is a slower and more accurate way of running the mountain top.

Q. He left you at Jenks' Knob, did he not?

A. Yes sir.

Q. And he went on around the divide of the waters by way of McDaniel Bald, I believe you said?

A. Mr. Burns?

Q. Yes.

A. Not at that time.

Q. I misunderstood your testimony.

A. No, I have not testified to that. He surveyed the line previously.

Q. As I understood your testimony given during your examination in chief, you and he separated at Jenk's Knob?

A. At that time he went to Asheville: previously he had surveyed the line around——

Q. McDaniel Bald?

A. Yes sir.

Q. You never did survey that line around McDaniel Bald
698 did you?

A. No sir.

Q. And therefore you do not know whether there is a single marked tree on that line, do you?

A. I cannot swear from my own personal knowledge. No sir.

Q. Did you not say during your examination in chief that there was not any marked tree around that line?

A. No sir. I did not testify about that line, excepting the general appearance of it, or approximately the distance as seen from the summit near there.

Q. So you did not say during your examination in chief of your first cross examination that there were not any marked trees on the line following the divide of the waters that is say by McDaniel Bald.

A. Around by the head of Telico. I testified about the Hangover lead. I examined that carefully.

Q. But you did not go around the head waters of the Telico.

A. No sir.

Q. This map of 1821 shows that the line runs around the head waters of Telico River, does it not?

A. According to the drainage it would appear so, but according to the direction it could not possibly go around the head of the Telico.

Q. If it follows the ridge around the head waters of Telico it will go around McDaniel Bald, will it not?

A. Yes it would.

Q. And that is the main ridge, is it not, over McDaniel Bald?

A. Yes sir; McDaniel Bald is on the main ridge.

Q. Now if you had to call for a locative, imperishable object such as McDaniel Bald or the main ridge, that is where you would run the line to is it not?

A. Yes sir.

Q. And running the line in that way you would go entirely to the east of the head waters of the Telico River would you not?

A. That would not correspond to this plat at all according to the directions of courses and distances shown.

Q. But answer my question now. If you would follow the locative call around the extreme height of the main ridge pass to the east of the headwaters of Telico River, would you not?

A. Yes sir.

Q. Without regard to the course and distance?

A. Yes, sir.

Q. According to this map of 1821 there is not a stream that breaks through the state line at any point from the Tennessee River to the Hiwassee River, is there?

A. Not according to that plat, no sir.

699 Q. You say you were never at the Hiwassee River?

A. No sir.

Q. Then you have not been there where the line crosses the Hiwassee River at the mouth of Caney Creek?

A. No sir.

Q. And you know that that creek is called for in the report of the Commissioners made in 1821, do you not?

A. The Hiwassee River is called for.

Q. Is not Caney Creek called for?

A. I do not remember just now.

Q. I call your attention to the copy of the report of the commissioners found on page 20 of the printed answer and cross bill of the defendant. Now tell me if that report does not call for crossing the Hiwassee River below the mouth of Cane Creek?

A. "To a spruce pine on the north bank of the Hiwassee River below the mouth of the Cane Creek, then over the said river the same course about one mile and crossing the same to a maple marked W. D. and R. A. on the south bank of the river." Yes sir. Cane Creek is mentioned there.

Q. So when they cross the Hiwassee River just below the mouth of Cane Creek they indicated that fact in their report, did they not?

A. That country was settled and the creek had a name to it. In this area or territory near the Tennessee River being a rough mountain country, the country unsettled, the creek did not have any name at that time.

Q. Who asked you about the creek up here at Tennessee River just now.

A. Well, you have been mentioning the creek.

Q. That last answer of yours was your argument in favor of the complainant, was it not?

Mr. MATTHEWS: I object to that because the answer shows for its self.

Q. Well, how do you know that this country was settled down here at the mouth of Cane Creek?

A. Well as a general matter of history, it is known to be a more open country.

Q. Who lived there?

A. I cannot tell you who lived there but as I say it is not such a rough country.

Q. When it crossed there it called for that creek did it not?

A. Yes sir.

Q. Does the report call for crossing the Little Tennessee River at the mouth of any stream whether it had a name or not?

A. No, it does not mention any creek, only the crossing of the Tennessee River.

700 Q. If you would run a line across the Little Tennessee River to a point just south of any stream the probabilities are in making a report of your running you would have called for that stream. Is that not so?

A. Yes sir.

Q. That would have been the natural thing to do in making the report, would it not?

A. At this time?

Q. Well, it was the natural thing to do in 1821 as indicated by the call for Cane Creek, was it not.

A. Yes sir, but the commissioners hurried through the work and omitted to do a great many things that they could have done.

Q. Were they in any greater hurry up here at the Little Tennessee River than they were at the Hi-wassee River?

A. It was commonly reported that they were in a hurry all the way through.

Q. I will agree with you about that, but is there anything to indicate on this map that they were in any greater hurry up at Little Tennessee River than they were down here at the Hiwassee River?

A. No sir not that I know of.

Q. Now Mr. Gannett, I believe you said you ran that line, northeast of the river as far as the 59 mile tree, did you?

A. I ran the line, that is surveyed the line in detail from the crossing of the so called turn pike, north eastward to the 59-mile tree.

Q. How far is that turnpike northeast of the river?

A. It is, I think 3½ miles.

Q. Did you survey the distance between the turn pike and the river?

A. I did not actually measure every angle and every separate distance, but I went——

Q. You went over and checked Burns' work?

A. Yes sir; I went over the line and tested it.

Q. Have you Mr. Burns' notes of that line between the turn pike and the river?

A. I have not here no sir, at this time. Of course all the results of the work are shown on this plat exhibit D.

Q. You have the notes of your own survey northeasterdly from the turnpike to the 59 mile tree, have you not?

A. Yes sir I have these notes here.

Q. How many stations are there, or calls, included in these notes?

A. 31.

Q. Please give them to the stenographer—that is now northeast from the turnpike to the 59 mile tree?

A. North 34 degrees, no minutes east, distance 246 feet;
701 north 17 degrees 49 minutes east, 437 feet; north 43 degrees 46 minutes east 511 feet; north 41 degrees 1 minute east, 93 feet; north 17 degrees 22 minutes east 451 feet; north 2 degrees and 40 minutes west, 450 feet; north 5 degrees 32 minutes east; 463 feet; north 0 degrees. 32 minutes west 297½ feet; north 33 degrees 44 minutes east. 517 feet; north 28 degrees 52 minutes east, 783 feet; north 15 degrees 59 minutes east, 637 feet; north 25 degrees 22 minutes, east 134 feet; north 53 degrees 2 minutes east, 579 feet; north 74 degrees 42 minutes east, 155 feet; north 62 degrees 8 minutes east 264 feet; north 47 degrees 6 minutes east, 516 feet; north 65 degrees. 58 minutes east 149 feet; north 2 degrees 27 minutes east, 1367.10 feet; north 6 degrees 58 minutes west 191 feet; north 0 degrees 30 minutes west 410 feet; north 45 degrees 53 minutes east, 332 feet; north 40 degrees 20 minutes east, 520 feet; north 43 degrees 59 minutes east 284 feet; north 51 degrees 24 minutes east 424 feet; north 32 degrees 32 minutes east. 545 feet; north 55 degrees 6 minutes east, 561 feet; north 82 degrees 32 min-

utes east 235 feet north 83 degrees 19 minutes east 344 feet; north 60 degrees 59 minutes east, 212 feet; north 43 degrees 56 minutes east, 472 feet; north 25 degrees 50 minutes east 190 feet. That is to the station 531 from which the 59-mile tree bears N. W. 10 feet dist.

Q. That is a pretty crooked line you have called out, is it not?

A. Yes sir because I have followed it in detail around the ridge.

Q. The extreme height of the mountain?

A. Following the extreme height of the mountain and every little crook and turn in it.

Q. On this map of 1821, just north of the place where the path to Tellassee crosses it, the first mile north east of that point has only one variation in it according to this map, has it not?

A. Yes sir, they undoubtedly sighted from one main summit to another main summit—cut across the little gaps.

Q. Then the next mile is absolutely straight is it not?

A. According to the plat it is.

Q. And the next one?

A. Yes sir.

Q. And the next one?

A. Yes sir.

702 Q. And the next one?

A. According to the Plat yes sir.

Q. So that according to this Plat, there are 4 straight miles on top of the mountain, one succeeding the other, are there not?

A. Yes sir.

Q. Do you know whether this path to Tellassee is what is not called the turn pike road that you refer to?

A. I should think it is likely. It probably goes through about the same gap. I should imagine so.

Q. The turn pike road does run through a gap?

A. It runs through a certain gap, yes sir, and it is likely there was a trail through that same gap many years ago.

Q. Will you please file an exhibit "Y" to your testimony a copy of Mr. Burns' note of the running of the line from the turnpike southwestwardly to the Tennessee River which you say you tested and believed to be accurate.

A. Yes sir—from the turnpike to the Tennessee River?

Q. Yes.

A. All right. (The paper referred to is accordingly marked exhibit "Y")

Q. And let it be shown on that exhibit that the line as run by him reached that marked four-and aft tree on the north bank of the Tennessee River.

A. Yes sir.

Q. Of course passing over that line north east of the river you had a very clear view of the condition of the country and its topography southwest of the river did you not?

A. I did, yes sir.

Q. There is no sort of difficulty about your seeing Hang-over Peak over there on the southwest side of the river, is there?

A. Excepting when you get up very high. When you get up on

Parsons Bald you do not see Hang-over proper. It is not as High as Haoe, and it has Haoe as a back ground.

Q. In other words Haoe is southwest of Hangover?

A. Yes sir.

Q. But there is nothing to obstruct the view of that big ridge and main mountain there made up of Hangover and Haoe, is there?

A. You see of course all of those high summits—Stratton Bald and Fodder Stack and Little Fodder Stack, and all the summits in that part of the country.

Q. Now going down to the river on the north side you can easily see that ridge or lead which runs from Hangover down to the Tennessee River can you not?

703 A. You can see that ridge as well as all the other leading ridges yes sir.

Q. And you can see that that ridge butts off at the river into a sort of bluff just about opposite where that marked Hemlock four-and-aft tree is, can you not?

A. Yes sir. It is a very steep bluff.

Mr. GANNETT: How much higher than Fodder Stack is Hang-over?

A. It is about seven or eight hundred feet.

Q. How much higher than Fodder Stack is Haoe?

A. Hayoe is about one hundred feet still higher.

Q. As a matter of fact that mass of mountain over there on the southwest side of the river which runs up and finds its greatest elevation in Hangover and Haoe, is much bigger than Fodder Stack, is it not?

A. I would like to modify your statement, by including Stratton Bald; that is Stratton Bald, I will say is the highest elevation immediately south of the river.

Q. Then that mountain over there southwest of the river which runs up and finds its highest elevation in Hangover, Haoe, and Stratton Bald, is not only much higher but bigger than Fodder Stack is it not.

A. The highest summits are undoubtedly higher than Fodder Stack but if you consider the average elevation of the whole ridge I think the Fodder Stack ridge would certainly average as high as the Hang-over ridge.

Q. Now then get back to my question. Is not that mountain that finds its highest elevation in the three peaks that I have named not only much higher but much bigger than Fodder Stack?

A. The bulk of Fodder Stack is large and massive but they are all subordinated to the Stratton Bald at the junction, we will say.

Q. Now is not Stratton Bald some considerable distance north-east of the Junction?

A. Only a mile or two; right near the junction.

Q. You say a mile or two. Is it a mile or two miles?

A. I would say it is nearer one mile than it is two miles; that is the junction is on the south end of Stratton Bald.

Q. How far is it from Hangover to the Junction?

A. If you want me to give a correct answer I will verify my statement.

Q. Get your map.

A. I would like to correct my statement about the distance from Stratton Bald to the Junction after verifying it.

704 Q. Very well.

A. It is just a half mile instead of being over a mile. It is approximately a half a mile from Stratton Bald to the Junction, and from Hangover to the junction a little less than three miles.

Q. How far from Haoe is it to the Junction?

A. Two miles approximately.

Q. There can be no doubt, can there, Mr. Gannett that this mountain from Hangover to the junction including Haoe and Stratton Bald is not only the highest but the biggest when compared with any part of the Fodder Stack.

A. It is certainly higher, and in the vicinity of Stratton Bald it is very much larger of course—that is bulky.

Q. Can there be any doubt but that this ridge, at least from Hangover to Stratton Bald, including Stratton Bald, is the main ridge of that mountain?

A. Well it is a main ridge; there is no doubt about it, but the biggest ridge, from Hangover, for instance, runs way off up to the eastward.

Q. I am talking about this mountain between Hangover and the junction, including Haoe and Stratton Bald?

A. Why yes sir; that is the main ridge right there, there is no doubt about it.

Q. And the main ridge which you have indicated on the map with your finger as being "right there" commences at Hangover, does it not?

A. Yes sir between Hangover and the Junction.

Q. Now how far is Hangover Peak as indicated on this map, from the Tennessee River, according to the contention of Tennessee.

A. It is a little less than six miles.

Q. And when you are on the north side of the river and on the state line coming down toward the river you can plainly see that entire ridge from Hangover all the way down to the Tennessee River, can you not?

A. Yes sir, from certain points on the Smoky mountain on the north of the river.

Q. I believe you said you did not run this line from Hangover northeasterdly to the river yourself?

A. I went over the line several times.

Q. But you did not run it yourself?

A. I did not measure the line.

Q. Then this part of the composite map of your self and Mr. Burns from Hangover to the river is his work, in so far as the surveying goes?

A. So far as the detailed surveying is concerned, but I examined the trees very carefully in looking for old marked trees.

705 Q. And you have very positively stated that the tree at the Sourwood gap, testified to by Mr. Hale as bearing state line marks, was not a state line tree, did you not?

A. Well, I testified that it had several marks on it, but no definite state-line mark.

Q. You do not mean to say that it was never marked as a state-line tree do you?

A. No sir, no one could say that. I say it has too many marks at the present time.

Q. You do not know what was on the block that was taken out by Hale and exhibited by him at his testimony in the United States Circuit Court at Knoxville in the case of Hebard vs. Belding and others, do you?

A. I have never seen that block, no, sir.

Q. You have read Hale's testimony, have you not?

A. Relating to that tree?

Q. Yes.

A. I think I have.

Q. Did you not read all the testimony preparatory to your examination as an expert in this case?

A. I read a large amount of testimony. I know I read some testimony by Hale but of course I cannot say that I read all of his testimony.

Mr. MATTHEWS: Where is that block?

Mr. GATES: The block, I suppose, Mr. Matthews, is down in the Federal Court. I never have seen it. It was filed in that case as an exhibit and I never sought to take it out. I have been told by Mr. Hale, I think, or someone else, that they looked for it and could not find it. Whether it was taken to the Court of Appeals at Cincinnati when the case went there on appeal, I do not know.

The WITNESS: My impression is that the tree is decayed, and the block, where the tree was blocked is decayed.

Q. You also read the examination of Mr. James K. Wilson in that old Hebard-Belding case, did you not?

A. I do not remember about Wilson.

Q. A Blunt County surveyor who is now dead?

A. I do not remember anything about Mr. Wilson's testimony, no sir, but I saw several volumes of printed testimony.

Q. Furnished you by whom?

A. By General Davidson. The books had his name on them.

Q. Now I am going to go back to Tellico for a moment. I believe you said that Mr. Burns left you at Jenks Knob?

A. Yes, sir.

Q. Then who accompanied you on your survey to the northeast?

Q. Jasper Fain.

706 Q. He is one of the claimants of some land that lies in there on the head waters of Tellico River, is he?

A. He lives there, yes sir. He has a house there.

Q. Did he show you the line down Jenks Ridge?

A. He pointed out several trees down Jenks Ridge and up the state ridge—trees that had been blocked previously.

Q. How far down Jenks ridge, according to your recollection, did you come before you turned off of Jenks Ridge?

A. I went right down to the headwaters of the Tellico and followed the ridge, as I remember.

Q. To the headwaters of Tellico?

A. Yes, sir.

Q. Do you not know, Mr. Gannett, that Jenks Ridge reached Tellico River some six or seven miles below where these head waters begin?

A. Well, we went down this ridge and crossed a branch of the Tellico River where it was about 25 or 30 feet wide and then up the state ridge.

Q. Now, don't you remember——

A. That was the so-called Jenks Ridge, as I understood.

Q. Then you ran a line all the way down Jenks Ridge from Jenks Knob to the Tellico River; is that it?

A. Yes, sir.

Q. Reaching the River where Jenks ridge reaches the river?

A. That is my understanding that it is called Jenks Ridge.

Q. All the way down to the river?

A. According to my understanding we followed a ridge all the way down to the river.

Q. Right on down to the river?

A. Well, close to the river, yes, sir—close to this branch of the Tellico River.

Q. That ridge reached the Tellico River some little distance above where the so-called state ridge on the northeast side of the Tellico River just dwindles out?

A. The line we ran went down a ridge which was practically opposite the foot of the state ridge which we followed. Of course, I cannot swear positively that it is called Jenks Ridge all the way down to the river, but we followed a ridge which as I say practically butted against the foot of state ridge.

Q. Now, Mr. Gannett, carry it in your mind, and let me ask you this, if following Jasper Fain down the Jenks ridge northeasterly you did not turn off to the left some little time before you reached the Tellico River?

A. Well, of course we were going down quite a steep ridge, and I do remember bearing to the left. Of course the line was not
707 straight. That would correspond to my recollection that we bore to the left and then continued a northeast course to the river and then up the state ridge in a general northeast course.

Q. At this point shown on the map, coming from Jenks Knob toward Tellico River where you made an abrupt turn to the left, that is where you ran Jenks ridge, was it not?

A. I would not swear to that. I know we were going down hill all the time. It was quite abrupt, I know, at places.

Q. Now, between where you make the abrupt turn to the left and this place the tree that you have marked on here, tree 107—86 M, is there a branch in there between that tree and Jenks ridge—a small rivulet or branch of water as they call it down in that country?

A. It would be a very small branch.

Q. Well, do not your notes show that you did cross a small branch?

A. According to my recollection we did not cross.

Q. Will your notes show it?

A. My notes should show it, yes sir.

Q. I have called on you to file a copy of them as you understand?

A. I can verify it by the notes. I have no record in the notes of any stream of any size, or even of any branch until we get to the middle fork, or whatever the name is of the Tellico River. There I noted the width of the stream and the heighth of the bank.

Q. How wide is it between banks, according to your notes?

A. I have recorded here 30 feet wide between banks, but we crossed the stream I know on a plank that was not over 10 feet long. We laid it on the rocks.

Q. Did you measure the distance across the river there from bank to bank?

A. We had one station on one side and one on the other bank.

Q. Do you not know that it is 66 feet from bank to bank?

A. That is possible, yes sir, but as I say the running water was not over I should say perhaps 12 feet; the stream was about 12 feet wide that is we stepped on the stones I know and then walked across a plank.

Q. The fact is that the stream at that point is divided by boulders or stones appearing in the bed of the river, is it not?

A. O, yes sir.

Q. Do you mean to say that the running water was only about 12 feet wide?

A. Something like that, yes sir. It was of course a swift mountain stream and rocky.

Q. Did you not testify during your original examination that it was about 20 feet wide?

A. Well, twenty or thirty.

708 Q. Twenty or thirty feet?

A. Yes, of course in a stream like that you cannot state anything definitely.

Q. The water, however, that you cross there—the actual water, not the bed—did you not testify that you crossed a stream where the water actually covered 20 feet of the bed?

A. I do not remember now exactly the distance.

Q. It was 30 feet you said?

A. I think it was more likely 30 feet, to give a general idea of the width of the stream of the little valley it is in.

Q. That is a pretty good sized mountain stream, is it not?

A. At that time of the year it was because we had had quite a large amount of rain.

Q. You followed Fain across the river?

A. Yes sir, up to state ridge.

Q. Now is it not a fact that this line that you ran, or followed Jasper Fain both to the southwest of the river and of the northeast

of it for some little distance from the river, is on practically level or river bottom land?

A. It is near that river. There is probably a few hundred yards.

Q. On each side of the river?

A. Yes sir; it is quite level there for quarter a mile perhaps.

Q. On each side of the river?

A. Not on each side of the river; I would say more on the northeast side of the river.

Q. You say there is at least quarter a mile of level land.

A. Not level land but practically so.

Q. Practically level land or bottom land?

A. You might call it bottom land.

Q. Between the river and the end of the state ridge on the northeast side of the river?

A. Well, no. I would like to modify that statement. Really the angle of elevation, or the slope of the ground, say, varies between 10 degrees and 15 degrees from the river.

Q. About how far northeast of the Tellico River does the state ridge end?

A. Right near the Tellico River.

Q. How near—half a mile?

A. Well, less than a half a mile.

Q. A quarter of a mile?

A. Of course the ridge is flatter; it flattens out near the lower end. You cannot make a definite statement of a flat ridge, that is where it is flat at the lower end.

Q. The reason you cannot make a definite statement about that is that the lower end approaching the Tellico River just flattens down until it is lost in the surrounding country; is that not it?

A. Right close to the river, of course, like any ridge it flattens out.

Q. How much is "close" according to your idea?

709 A. It is a quarter of a mile, I would say.

Q. A quarter of a mile is something like 1,300 feet?

A. Yes sir.

Q. Then you say within that?

A. It flattens out there.

Q. Is it a thousand feet from the river?

A. As I say the slope is really about 10 degrees, and it is not very flat, according to the record it actually has a slope from 10 to 15 degrees. That is not level.

Q. Since you won't tell me what you mean by "close," I will ask you if there is not a road between the river and the end of Jenks ridge on the north side?

Mr. MATTHEWS: I object to the question because the witness has not in any way said or indicated that he would not tell you what he knows and all he knows.

Q. Well then tell me, Mr. Gannett, whether there is a road between the river and the end of Jenks ridge on the north side?

A. There is a road according to my remembrance.

Q. Now on the south side I believe you say there is about half a mile that is practically flat or river bottom?

A. No sir; you misunderstood me.

Q. Let us get down to what you did say? that is about the south side. I want to see to what that quarter mile refers?

Mr. MATTHEWS: Will you permit me to say what I understood by it, that it was on both sides of the river, but the most of it he said was on the northeast side.

A. Yes, I would say in a general way that it is not quite as steep on the north side as it is on the south side; on the south side, for instance, the slightest slope is seven and one half degrees and it varies from 7½ to 22 degrees. That is a very steep slope.

Q. O yes; that is when you are going up Jenks Ridge?

A. No sir; that is within 100 feet of the river, while the other is 300 feet from the river.

Q. How high is that tree that you call the 86 mile tree above the river?

A. About 700 or 800 feet. It is less than ⅛ of a mile—I mean in distance.

Q. I asked you about how high it was above the river?

A. You mean in elevation?

Q. Yes, what is the elevation? What is the elevation of the place where the so-called 86 mile tree stands above the river?

A. It is about two hundred feet higher than the river.

Q. You have the figures there; give them to us nearer than "about 200 feet"?

A. Well, 192 feet.

Q. What do you take that elevation from?

A. That is from the line that was run—you might call it a vertical angle line, as I determined the slope of the line in order to get the exact distance.

Q. Did you take the elevation of those points as you went along there?

A. The relative elevation.

Q. What is the elevation above sea level of the place where this line which you ran crosses the Tellico River?

A. As I say, I carried along the relative elevation. I can give you the approximate elevation; I think it is 2,620. That is approximately; I would not swear to that as an exact elevation it is as close as I can get it.

710 Q. What did you take that from—by a natural taking of the elevation of the ground?

A. As I say, I measured the vertical angle as it is called, at every station so as to reduce the slope distance to the horizontal distance. So, starting at a given point, with a given elevation, we find an elevation of the next station and measuring the line on the ground reduce it to the horizontal.

Q. What elevation does that government map show Jenks Knob to have?

A. Approximately 3,500 feet.

Q. How much higher approximately is Jenks Knob than the river at that point where you ran this line across it?

A. There is a little over a thousand feet difference in elevation, I should say.

Mr. MATTHEWS: Above sea level, do you mean?

The WITNESS: No; the difference, I said, between the two.

At 12:30 o'clock a recess was taken until 2:00 o'clock p. m.

After Recess.

2 P. M.

S. S. GANNETT resumed the stand for further cross examination.

By Mr. CATES:

Q. Now, Mr. Gannett, when you ran this line northeasterly from Jenks Knob, did you have Mr. Burns' field notes?

A. Yes, I think I did.

Q. And you were also guided along the line by Jasper Fain?

A. Yes sir.

Q. This blue-print before us is an exact copy of the map which was exhibited with the testimony of yourself and Mr. Burns at Asheville, isn't it?

A. Yes sir. This is a fac simile of our signatures, in the lower right hand corner.

Q. And it is called "Complainant's Exhibit D"?

A. Yes sir.

Q. Now, Mr. Gannett, if you never went around this main ridge or divide of the mountain by way of Rock Knob*b* and McDaniel Bald and thence to Laurel Top, as Tennessee contends the true boundary between the State to be, how can you say that that line around that route, traversing the main ridge of the mountain, does not tally with the map of 1821?

711 A. It did not agree at all with it in the distance and direction; for instance, between Jenks Knob and Laurel Top or County Corner.

Q. But you never ran that line around by McDaniel Bald, did you?

A. No sir.

Q. Then you make that statement upon what you have learned from somebody else?

A. I make the statement from the fact that the lines from Jenks Knob to County Corner, as run by me, agree almost exactly in distance and direction with that portion of the line shown on the plat of 1821, and the line around by Rock Knob and McDaniel Bald could not possibly agree with that plat.

Q. Now look at this map of 1821 and tell me if Laurel Top and Jenks Knob are in terms laid down on that map?

A. No, they are not there by name.

Q. Then your answer is predicated upon the assumption that some two points upon this map of 1821 are respectively Jenks Knob and Laurel Top?

A. Yes sir.

Q. Now this map of 1821 shows all of the headwaters of Tellico River to be west of the State line does it not?

A. Yes sir.

Q. A line around by McDaniel Bald would throw all of the headwaters of Tellico west of that line would it not?

A. Yes sir.

Q. Now, Mr. Gannett, tell me how far it is, according to the scale of this map of yours and Mr. Burns, from where you crossed the Tellico River in running the State ridge line to the headwaters of Tellico, near the McDaniel Bald?

A. It is between four and five miles.

Q. That is, between four and five miles in a straight line?

A. Yes sir.

Q. Now, how far is it from the point where your State ridge line crosses Tellico River to the headwaters of Tellico, which you and Mr. Burns have designated as Peckerwood Creek?

A. That is about four miles.

Q. If you had been running this line along what you call the State ridge, as shown on this map, Complainant's Exhibit D, crossing Tellico River at the point indicated on that map, wouldn't you have referred to that in your report of the survey?

A. Yes sir.

Q. There is no doubt about that, is there?

A. In a detailed report of the survey I would have referred to it or shown it on the plat, as is shown on this map.

Q. You mean by this plat, Exhibit D?

A. Yes sir.

712 Q. You have read the report of the commissioners, have you not?

A. Yes, the brief report.

Q. And you have read also the acts of Assembly of North Carolina and Tennessee confirming that report, have you not?

A. Yes sir.

Q. You did not find anything either in the report or in the Acts confirming the report which calls for a line crossing the Tellico River did you?

A. No sir. I would say that report is very brief.

Q. Nevertheless it is the report of the survey?

A. Yes sir; a very brief report of the survey.

Q. It is full enough to call for Cane Creek, is it not?

A. As I remember it, that is the only Creek mentioned.

Q. As I understand it, after you had run this State ridge line out to Laurel Top, you did not run the undisputed part of the line between Laurel Top and the place which is designated on this map as Junction?

A. No sir, I did not run it; I had been over portions of that line years ago.

Q. Yes; I will come to that presently. When you got to the point which is designated on this map of yours and Burns as June-

tion, who showed you where to go down off the main ridge to the Fodder Stack ridge?

A. Mr. Burns was with me for one, and Mr. Deputy, and Mr. H. S. Hayes joined me about a day later, I think.

Q. So when you got to a point called Junction on the map, you came from the southwest along the crest of the main ridge?

A. Yes sir; I came from the southwest.

Q. Now, Mr. Gannett, how far down the side of the mountain constituting the main ridge at that place is it to where the Fodder Stack lead or ridge joins the main mountain?

A. Well, the lead, or the main lead to Fodder Stack joins the main ridge, you might say, right at the junction.

Q. I understand. How far below the summit of the main ridge is the summit of the Fodder Stack ridge down the side of the mountain?

A. It is a few hundred feet.

Q. In your examination in chief you speak of a ridge which leads off of Big Fodder Stack Ridge down to Slick Rock Creek?

A. Yes sir.

Q. That is just a spur of Fodder Stack Ridge down to that place?

A. Yes, it is one of the leading spurs.

Q. The main ridge extends on around to Little Fodder Stack and thence to the Tennessee River several miles below Slick Rock Creek, does it not?

A. Yes sir.

Q. What is the elevation above sea level of the river where
713 the State line, according to the Tennessee contention, crosses it?

A. It is about 1,200 feet.

Q. From what do you take that?

A. That is from the Nantahala topographical sheet of the United States Geological Survey which has been submitted as evidence in this case. It is between eleven and twelve hundred feet according to the contour intervals.

Q. When you were on the ground there with Mr. Burns, did you take the elevations of that Line?

A. Well, portions of the line, as I say, I carried by vertical angles, or determined the relative elevations by vertical angles, and other portions of the map were tested by a barometer.

Q. Now, take a distance of half a mile from the river southwest, according to the Tennessee contention; that is on the line southwest from the river, according to the Tennessee contention, and tell me what is the elevation of that point?

A. It is about 1,800 feet, that is, above the sea, or 700 feet above the river, approximately.

Q. Now take a point one half a mile from the mouth of Slick Rock Creek, up the Creek, and tell me the elevation of that point?

A. Up the Creek it would be about 50 feet, that is above the river.

Q. Do you mean to say that within a half mile the Creek falls 50 feet?

A. Yes; that is approximately it would be a little over 50 feet, as close as you could scale it from this map.

Q. You are giving the elevation then from this topographical map?

A. From the map, and also from the fact that I have been up that Creek too.

Q. Now take a point one mile southwest from the river on the Hangover Ridge or lead, according to the Tennessee contention, and give me the elevation of that point?

A. That is between 1,700 and 1,800 feet, that is, above sea level; or about 600 feet above the river.

Q. Give me the elevation of a point on Slick Rock Creek one mile up it from its mouth at the river?

A. Well, that would be very close to 100 feet higher than the river.

Q. Now take a point two miles from the river on the Hangover Ridge or lead, Tennessee contention, and give me the elevation of that point?

A. That is 850 feet, approximately, above the river.

Q. Now then give the elevation of a point on Slick Rock Creek two miles above its mouth.

A. Two hundred and fifty feet above the river.

714 Q. Well now give me the elevation of a point on the Tennessee contention along the Hangover Ridge or lead three miles southwest of the river?

A. 2,350 feet above the river.

Q. Now give me the elevation of a point on Slick Rock Creek three miles from its mouth at the river?

A. About 600 feet above the river.

Q. Now take a point four miles from the river along the Hangover Ridge, Tennessee contention, and give me the elevation of that point?

A. That would be about 2,600 feet, approximately, above the river.

Q. Now take a point four miles from the mouth of the Creek up it, and give me the elevation?

A. That approximates 850 feet above the river.

Q. Now take a point five miles from the river, according to the Tennessee contention, on Hangover Ridge or lead, and give me the elevation on that point?

A. That is approximately 3,000 feet above the river.

Q. Now then run up Slick Rock Creek five miles from its mouth and give me the elevation above the river at that distance?

A. That is approximately 900 feet above the river up the Creek.

Q. Now give me the elevation of a point, on the Tennessee contention, on Hangover Ridge, six miles from the river?

A. That would be about 4,000 feet higher than the river.

Q. Now what is the elevation of a point six miles from the river, running up Slick Rock Creek, according to the North Carolina Contention?

A. That is between 3,100 and 3,200 feet above the river.

Q. Now, at the end of seven miles from the river along the Tennessee contention, what do you find the elevation to be according to that government map?

A. It is approximately 3,900 feet above the river.

Q. Now then seven miles from the river up Slick Rock Creek, according to the North Carolina contention, what do you find the elevation to be above the river?

A. Approximately 3,300 feet above the river.

715 Q. Now, according to your contention seven miles from the river up Slick Rock Creek brings you to the top of Fodder Stack Ridge?

A. Yes, up on the main ridge.

Q. Where would you find yourself at the end of seven miles going up the Tennessee contention along Hangover Ridge?

A. Near Hangover.

Q. Haven't you passed Hangover?

A. Yes sir; between Hangover and Stratton Bald.

Q. So that running those two lines from the river seven miles we have the approximate elevations above the river as follows: At the distance of one half mile from the river 700 feet on the Tennessee line and 50 feet on the North Carolina line; at the distance of one mile from the river on the Tennessee line the elevation above the river is about 600 feet and on the North Carolina line at a distance of one mile it is about 100 feet; then at two miles the approximate elevation on the Tennessee line is 850 feet above the river, while that of North Carolina is only 250 feet; at the distance of three miles on the Tennessee line the approximate elevation above the river is 2350 feet, while on the North Carolina line it is only 600 feet; at four miles from the river on the Tennessee line the approximate elevation above the river is 2600 feet, while on the North Carolina line it is only 800 feet; at the end of five miles from the river on the Tennessee line the elevation above the river is approximately 3000 feet, while on the North Carolina line it is only about 900 feet; at the end of six miles on the Tennessee line the elevation above the river is 4000 feet, while on the North Carolina line it is between 3100 and 3200 feet; at the end of seven miles the elevation on the Tennessee line above the river is about 3900 feet or more, and on the North Carolina line it is only 3300 feet. That is correct, is it not?

A. Yes sir; that is, the elevations are approximate; they are not absolutely exact.

Q. Now can there be any doubt about which is the greater average elevation of those two lines?

716 A. No sir; one is up a ridge and the other is partly up a creek.

Q. How far did you say it is from Big Fodder Stack to the Junction? It is about three miles, isn't it?

A. Yes, sir, about three miles.

Q. How far did you say it is from Hangover to the Junction?

A. It is a little less than three miles.

Q. Approximately three miles isn't it?

A. Yes, it is about three miles.

Q. What is the elevation of Big Fodder Stack, according to that government map?

A. It is something over 4300 feet above sea level.

Q. What is the elevation of Hangover, according to that government map?

A. It is a little over 5100 feet.

Q. Now take a mile southeasterly from Big Fodder Stack toward the Junction and give me the elevation?

A. Well, that is between 4100 and 4200 feet.

Q. Now then take a mile along the Tennessee contention southwesterly from Hangover and give me the elevation of that point?

A. 5000 feet.

Q. Now take a point on the North Carolina contention southeasterly from Big Fodder Stack from the Junction two miles and give me the elevation of it?

A. 4400 feet, plus.

Q. Now take a point on the Tennessee line two miles southwest from Hangover and give me its elevation?

A. It is very close to 5300 feet; it is between 5200 and 5300 feet.

Q. Does that two mile line from Hangover southwesterly carry you to Stratton Bald?

A. Yes sir; just over the summit.

Q. What is the elevation at Junction, at the end of three miles, approximately, from Big Fodder Stack, as well as from Hangover?

A. It is about 4900 feet.

Q. So the elevations coming from Big Fodder Stack to
717 Junction, including the elevations at each end of the line would read: 4300, 4100, or 4200, 4400, and at Junction 4900?

A. Yes sir.

Q. And along the Tennessee contention from Hangover it would read: 5100 at Hangover, then 5000 a mile southwest, 5300 at the end of two miles, about Stratton Bald, and 4900 at Junction?

A. Yes sir.

Q. There cannot be any doubt about which of those three miles is the biggest, can there Mr. Gannett?

A. There is no doubt about which is the higher.

Q. I want to ask you if it is not biggest in bulk? Does not that very elevation indicate that the bulk below it spreads it to a greater extent at the base on the Hangover, Hao and Stratton Bald ridge than does the Big Fodder Stack ridge?

A. Well, it does, especially near the Stratton Bald.

Q. Now, Mr. Gannett, would it be possible for a surveyor to run a line up Slick Rock Creek five miles, as this line appears on yours and Burns' map, and then up that spur to the Big Fodder Stack Ridge, and then southeasterly along the Big Fodderstack Ridge to Junction, without seeing that the headwaters of Slick Rock Creek were enclosed on the southwest by the Big Fodder Stack lead or ridge, and on the southeast by the Hangover ridge or lead?

A. He would be able to see that if at that time the timber was at all open. You could see it at the present day, because that lead or ridge up to Big Fodder Stack is nearly bare now.

Q. Would it be possible for a man running that line up Slick Rock Creek, thence up that spur to Big Fodder Stack Ridge, without seeing that off there to the left, Hangover, Hao, and Stratton Bald towered some 800 or 900 feet above him?

A. He would be able to see them above him.

Q. It would be impossible for him to fail to see that tremendous mass of mountains over there to his left?

A. Well, he could certainly see it if the timber was open at all at that time so that he could see through the timber; he would
718 see those mountains there.

Q. He would see that tremendous mass of mountains up there to his left if he was not blind, would he not?

A. He ought to see them surely.

Q. Do you think that six men could go up that Creek, and all of them fail to see that tremendous mass of mountains towering up there to the left, which we now call Hangover, Hao, and Stratton Bald?

A. I should say they would not be able, probably, to see those mountains from the Creek basin, because the timber is so very thick down there, but the moment they get on the main ridge they should be able to see out.

Q. Now that ridge or lead that juts out from Fodder Stack and runs down like a spur to Slick Rock Creek about five miles above this Creek, is practically denuded of timber?

A. At the present day.

Q. Do you know what timber was on it in 1821?

A. No sir, I do not.

Q. You do not know whether there was any timber there or not, do you?

A. I should say there must have been some timber or considerable timber, because the trees have been burned for one thing; there is dead timber there now to some extent.

Q. How many trees?

A. At the present day it is practically open, on account of the fires which have occurred.

Q. How many trees did you see along there?

A. I saw a good many scattering dead trees.

Q. There wasn't anything there to indicate that from that ridge or spur you could not see Hangover, Hao, and Stratton Bald, was there?

A. I should say from that spur there is very little doubt they could get a good view of those mountains. In the Creek bottom the timber is unusually dense, and you cannot see through the tree tops; that is, in the summer when the foliage is on the trees.

719 Q. Going from the Big Fodder Stack to Junction, there isn't any trouble about seeing that tremendous mass of mountains off there to the left, which is Hangover, Hao, and Stratton Bald is there?

A. No sir, not after you get up on the main ridges.

Q. You mean the main ridges of Fodder Stack?

A. Yes sir.

Q. And there isn't any trouble from seeing from there down to the headwaters of Slick Rock Creek, is there?

A. No sir.

Q. There isn't any trouble about seeing the headwaters of Slick Rock Creek from that Fodder Stack Ridge out toward Junction, just as it is depicted on this Burns map, Plaintiff's Exhibit D, is there?

A. No sir.

Q. Now turn your attention to this copy of the map of 1821 and tell me if that mile circle on the south bank of the Tennessee River does not appear to be some little distance below the mouth of that stream, which is called a creek?

A. Why, I should say it was about as close to the mouth as it could be shown on the scale, so as not to interfere with the mouth of the creek. It appears to be practically at the mouth of the creek.

Q. Have you your dividers here?

A. No; I only have this scale.

Q. Look at it again, Mr. Gannett, and tell me if, according to the scale of that map that mile circle is not at least 60 or 70 poles below the mouth of that stream called a creek?

A. No sir. I should not call it that. As I say, the way it is drawn it is practically on the southwest bank of the creek; it will only be a very few poles from the mouth of the Creek.

Q. Well, the creek appears to go in there at the river almost at right angles does it not?

A. Very nearly; not exactly; it is perhaps an angle of 60 degrees.

Q. It is a much more obtuse angle than the angle made by
720 the two lines when reaching that mile circle on the south bank of the river on the other line proceeding from the mouth from that mile circle up toward the creek, isn't it?

A. It is very nearly the same direction as the course of the mile.

Q. About how far is it, according to the scale of that map, from that mile circle on the south bank of the creek to that little black dot which indicates the first turn in the course of the line?

A. It is about a quarter of a mile.

Q. That is about 80 poles, is it not?

A. Yes sir.

Q. That seems to take you up to the creek, doesn't it?

A. It takes you up the southwestern bank of the creek.

Q. The- there is a turn that occurs practically parallel with this stream marked a creek, isn't there?

A. Yes sir.

Q. And then one that runs directly away from the creek, isn't there?

A. Yes sir; there is a short course directly away from the creek?

Q. Then it turns again in the direction of the creek?

A. Yes, and comes back to the creek, or right on the bank of the creek.

Q. Right where there is a mile circle?

A. Yes sir.

Q. From that first mile circle, after this line appears to have

gotten back to this stream, it continually leaves and diverges from the stream, does it not?

A. According to the plat, yes sir.

Q. And at the second mile circle from the river, according to this map or plat of 1821, the line is on top of a ridge, isn't it?

A. It appears to be about a half a mile from the creek, as shown, and up on a ridge, yes sir.

Q. Now you say about a half mile from the creek as shown?

A. According to the mile circle. In a straight line it is about a half mile from the creek.

Q. Well now according to this map of 1821, how far is
721 the third mile circle, the end of the third mile from toward the river from this stream marked a creek, according to the scale of this map?

A. About a mile and a quarter.

Q. It is a little over a mile and a quarter, isn't it?

A. Yes, slightly over a mile and a quarter.

Q. Now at the end of the fourth mile, or the four mile circle, where this fourth mile circle appears to be, how far is the stream marked a creek from that mile circle?

A. It is about a mile and three-quarters.

Q. Now at the fifth mile circle southwest of the river, apparently indicating five miles from the river, how far is that fifth mile from that stream marked a creek?

A. About two and a quarter miles.

Q. Now, Mr. Gannett, have you ever been out on the Cheoah River?

A. I have crossed the Cheoah River a few miles above the mouth.

Q. How far is Hangover Peak from Cheoah River? It is about two and a quarter miles isn't it?

A. No sir; it farther than that. At the nearest point, in a straight line, it is four and a quarter miles.

Q. What are you giving that distance from?

A. From the topographical map, the Nantahala sheet of the Geological Survey.

Q. Do you know whether that Cheoah River is laid down there correctly?

A. I should say from my own knowledge it is at least that distance, because I have traveled it; I have traveled from the foot of Hangover to the Cheoah River.

Q. On what course from Hangover did you measure that four miles?

A. Northeast; that is, to the nearest point.

Q. Let us see. What is your course now?

A. It it very close to north 45 degrees east.

Q. Is that the place you are running to (indicating on map)?

A. Yes sir.

Q. North 45 east from Hangover?

722 A. Yes; from Hangover to Cheoah River.

Q. Take a point north 45 east from this fifth mile circle and tell me how far it is to this stream marked a creek?

A. It is about three miles; from a point on the map of 1821, five miles from the river northeasterly to the creek.

Q. To this stream that is marked a creek?

A. Yes sir, to this stream that is marked a creek.

Q. About how far from the Tennessee River up this stream marked a creek is it to a point where it makes a sudden turn to the left and southeast?

A. It is about a mile and a half.

Q. Now about how far is it, according to the scale of this government map from the mouth of Cheoah River up it to where it makes a decided turn to the left; that is, the southeast?

A. The general course of the Cheoah river is southeast; there are a number of crooks and turns in it. Will you point out the specific point you refer to?

Q. How far up Cheoah River have you been?

A. I should say I crossed the river——

Q. Approximately.

A. I should say I crossed the Cheoah River about four miles above its mouth.

Q. Now, Mr. Gannett, I call your attention to Mr. Burns' map, Plaintiff's Exhibit D, and it seems that he ran up Slick Rock Creek, crossing it now and then, and about five miles from the river; that is right, is it not?

A. Yes sir.

Q. How many times did he cross the creek in that five miles, according to this line of survey?

A. I would say twenty nine times, and the plat shows that he also followed the bed of the creek part of the way.

Q. Do you know whether he found any marked trees in the bed of the creek?

A. Probably not. I know I found marked trees along the banks of the creek.

Q. I believe you said it was about a mile and a half from
723 its mouth, at the Tennessee River, where this stream marked a creek on the map of 1821 turned to the southeast?

A. Yes sir.

Q. About the same distance up Slick Rock Creek, as laid down on Burns' map by actual surveys, Slick Rock Creek turns to the west, does it not?

A. There are a number of smaller branches running into the creek, but the general course of the creek, say for five miles, is southwest.

Q. How far, according to the scale of this map, is this point where I have my pencil, from the river?

A. That is a little over a half mile.

Q. About a half mile from the river, as Mr. Burns surveyed Slick Rock Creek, it turns over sharply to the southwest and runs nearly due west?

A. Yes sir; for about 2000 feet it runs nearly due west.

Q. That is for nearly a half mile it runs nearly due west?

A. Yes sir.

Q. Then for a little more than a half mile it runs a little west of south, does it not?

A. Yes sir.

Q. And then for nearly a half mile it runs almost due west, does it not?

A. Yes sir.

Q. Now, how far is this point at the end of the second line where it runs due west from the mouth of the creek, according to the scale of Burns' map?

A. Following the meanders of the creek about two miles.

Q. In a straight line?

A. It is 8000 feet.

Q. That is approximately a mile and a half, is it not?

A. Yes sir.

Q. Now then from that point the general trend of it is to the southwest, is it not?

A. Yes sir.

Q. Now, Mr. Gannett, I will ask you to state if you had run a line up this Slick Rock Creek, crossing it as did Mr. Burns,
724 or crossing it a fewer times than Mr. Burns did, or more times than he did, and making notes of your survey, when you came to draw the map showing this survey, would you not have shown the line along the creek and crossing it where you ran it?

A. Yes sir.

Q. Is it possible that at the end of four miles from the mouth of the Creek and the river you would have had that point a mile and a half away from the creek?

A. I would not have had it if I had drawn the map myself and from my own notes.

Q. If the map was drawn from notes of a survey, and you had run up that creek as Mr. Burns did, crossing it as he did, and had those notes, would you have made a map showing that your line left the creek at a distance of a mile and a half and at four and five miles where he says he crossed the creek he was some two or three miles from the creek?

A. No sir. I would hope to be a better draftsman than that.

Q. If that be true, taking the position of this stream marked a creek on this map, and this map was drawn from an actual survey, it does not indicate that this line southwest of the river ran up Slick Rock Creek and crossed it as Burns does 29 times, or crossed it at all at any place, does it?

A. No sir; it shows that the line followed along the banks of the creek closely for a mile and a half.

Q. And then diverged from the creek, doesn't it?

A. Yes sir.

Q. Until at four miles from the river he was a mile and a half away from the creek, doesn't it?

A. Yes sir.

Q. These hachures or etching marks just southwest of the river indicate that the line from the river and the second mile circle ran alongside of a ridge, do they not?

A. Yes sir, along a bluff.

725 Q. And rather on the east side of a ridge or bluff?

A. Yes sir.

Q. And at the end of the second mile circle they indicate that the line is on top of a ridge?

A. Well no; they indicate, apparently, that it is in between two ridges.

Q. All right. Then at the end of the third mile circle, at the third mile circle, it is on a ridge, is it not?

A. I judge so from the way I read the map.

Q. The etching or the hachures on this map along the line seem to tell a surveyor that the lines run along there on a ridge, do they not?

A. Yes sir. These hachures are peculiar to this map, I should say. They are different from what they be on a modern map.

Q. Now you have said that this map tallies exactly with the North Carolina contention, have you not—this map of 1821?

A. I have not said that; it does tally exactly. I say that it tallies very satisfactorily according to the scale of the map.

Q. That is what you want to say now?

A. I did not say that it tallies exactly, because I think you will find in my previous deposition——

Q. I will read it to you.

Mr. MATTHEWS: Let him finish. He says that you will find in his previous deposition——

The WITNESS: I mean to say that there are inaccuracies in the plat but in a general way the plat tallies with the North Carolina contention in the general courses and distances shown.

Q. You were asked in your original examination, in relation to this map in the North Carolina contention, the following question——

Mr. MATTHEWS: What page is that on?

Mr. CATES: At the bottom of page 411. You were asked this question:

How does it tally in these two places with the North Carolina contention, as to the plot of 1821?

And your answer is:

It tallies practically exactly.

726 The WITNESS: In those two places. What two places are referred to?

Q. Are there any two places along that line that have been in dispute according to your understanding?

A. If you will refer to the two disputed sections, yes. You will notice that expresson is qualified by "practically exactly." There isn't anything exact about that map; there is no map made that is absolutely exact.

Q. Let me see how far it tallies. You say it tallies by course and distance?

A. By the general courses and distances.

Q. Haven't you just shown us by reading from your notes re-

versing the call from the 101st mile stone, to the 100th mile, that the line along the main ridge of the mountain through which you and Burns surveyed as the true line, and where the line is in dispute is a very crooked line?

A. Yes. I stated that we followed around the ridges and made a station at every little angle or change in course on the line. On this map the line is generalized. That is, they sighted from one high summit to another high summit at some distance, and then measured around along the top of the ridge.

Q. Then they did not measure a straight line?

A. No sir; they could not measure a straight line; they would have to go around.

Q. Then it does not tally?

A. I say in a general way the general course tallies; but when you come right down to details it does not tally, the absolute details of the course.

Q. Then you sighted from one high summit to another high summit a mile away. Is that what you mean they did?

A. That is what I think they did.

Q. Then they measured around the meanders of the mountain to that high summit to which they sighted?

727 A. Yes sir.

Q. Don't you know that line would be longer than a mile?

A. The mile as measured would be longer.

Q. Then it does not tally in that respect?

A. No not exactly.

Q. Now don't you know from examining this mountain top along northeast of the Tennessee River where it is in dispute and straight miles called for there between 56, 57, 58, and 59, or whatever it may be there, and if you run a straight course there for a mile from any one big peak to another, that it runs either out into Blount County, Tennessee, or over into Swayne County, North Carolina?

A. Certainly. They would swing out to one side or the other, but the average would be on the main summit.

Q. Then it does not tally with your actual running on the ground, does it?

A. Not exactly.

Q. Then down here at this Tellico contention, I believe you have adopted the word "drainage," Mr. Gannett. That line is shown to be running all the way around the head waters of Tellico River, is it not?

A. Well, that does not show the Tellico River crossing the line.

Q. That does not tally with the North Carolina contention does it?

A. The drainage does not tally, but the general course shown does tally.

Q. But the line as shown on this map on the mountain and to the east of the head waters of Tellico does not conform to the North Carolina contention does it?

A. No sir, it does not correspond to the theoretical summit, I should say.

Q. The North Carolina contention *d*rosses the Tellico River does it not?

A. Yes sir.

Q. The Tennessee contention runs around the head waters of Tellico?

A. Yes sir.

Q. Now does this line as laid down on this map run around the head waters of Tellico, or does it cross the head waters of Tellico?

728 A. As shown on the plat, it runs around the head of the stream.

Q. Then it does not tally with the North Carolina contention, does it?

A. No sir, not according to the drainage.

Q. Now, go back up here to Slick Rock country. This mile circle two miles southwest of the Tennessee River on the ridge to the west of the stream marked a creek does not conform to the North Carolina contention, does it?

A. No sir; the stream apparently leaves the line.

Q. At the end of three miles from the Tennessee River and something over a mile and a half to the west of this stream marked a creek, it does not conform to the North Carolina contention does it?

A. Well, the stream as shown does not conform to the contention; that is, the stream is not drawn in carefully.

Q. Just at about the end of the fourth mile up Slick Rock Creek, according to the way Mr. Burns has made his survey he is on the east side of Slick Rock Creek?

A. He goes from one side to the other.

Q. Isn't he on the east side of Slick Rock Creek about four miles from the mouth of Slick Rock?

A. It is hard to say. He crosses at such frequent intervals.

Q. At the end of about four miles from the mouth of Slick Rock he is on the east side of the Creek, according to this map, Exhibit D?

A. He may be at a certain point, and then 50 feet farther he will be on the other side.

Q. But he is still on the east side of Slick Rock according to this map, Complainant's Exhibit D, at the end of about four miles from the mouth of the Creek, isn't he?

A. He swings from one side to the other, you might say, and sometimes actually follows the Creek.

Q. I think you could have answered that question; and I will ask you to scale this map of Mr. Burns and tell me if at the end of about four miles from the mouth of Slick Rock Creek he does not have a line on the east side of Slick Rock?

729 Mr. MATTHEWS: I object to that, because "about four miles" is so indefinite; and the witness has said that he may be on either one side or the other because they cross it and are on

both sides in about 50 feet. He has therefore answered the question.

The WITNESS: Do you refer to following the four miles?

Q. The way he measured it?

A. That is following the meanderings of the Creek.

Q. This point here right in the bend of the creek is about four miles from the mouth of the Creek according to the scheme of this map?

A. As I understand it, it is a little over five miles from the mouth to the forks. I cannot answer exactly. For instance; if it follows at that point, it is east of the Creek, if it does not follow there, it is west of the Creek.

Q. Then I will say between three and four miles from the mouth of Slick Rock Mr. Burns has laid down the line as surveyed by him according to the North Carolina contention as being on the east side of Slick Rock at some places?

A. Yes, at some places.

Q. And between the third and fourth mile circles, according to this map of 1821, there is no point on that line that is less than a mile and a half from the west bank of the creek and on the west bank of the creek?

A. That is true.

Q. So that no part of the line, according to this map of 1821, appears on the east side of Slick Rock Creek, does it?

A. No sir.

Q. So that in those respects this map of 1821 does not tally at all with the North Carolina contention?

A. No sir.

Q. In the question the last but one I asked you I referred to this stream here marked a creek?

A. Yes sir.

Q. I call your attention to the report of the Commissioners, copied into the answer and cross bill of defendants, State of Tennessee, on page 19, where it says, after describing the line down to the Tennessee River: "From Tennessee to the main ridge".

730 A. Yes I note that.

Q. Now, Mr. Gannett, from a point on the north side of the Tennessee River at that marked "Fore and aft Hemlock Tree," is not the nearest route to the main ridge directly across the river along that Hangover Ridge or lead to Hangover?

A. That is the shortest route to a ridge.

Q. And the shortest route to the main ridge?

A. There may be a difference of opinion about what is the main ridge.

Q. You had a talk some time ago with Hon. John A. Moon, Representative in Congress from the 3rd Tennessee District, had you not?

A. He called at my office, yes sir.

Q. Didn't you tell him that that is where the Commissioners ought to have run the line?

A. I told him what?

Q. From that marked hemlock on the north bank of the river directly to Hangover?

A. No sir; that is not the point I referred to.

Q. Would not that line, answering that call, have complied with the Session Act?

A. Well, I say there can easily be a difference of opinion as to what ridge they should have gone up; what is the main ridge at that point?

Q. The Hangover Ridge or lead running right down to the south bank of the river is the very nearest ridge to any one on the north bank of the river, isn't it?

A. It is the nearest ridge to the ridge that they apparently came down.

Q. And directly opposite?

A. And directly opposite.

Q. It is right in line of that marked 'Fore and Aft Tree"?

A. It is directly opposite.

731 Q. Mr. Gannett, you have produced here, and I believe you exhibited with your original examination a sheet of a topographical map which has the State line running down Slick Rock Creek?

A. Yes sir.

Q. Now when did that first so appear upon one of these United States geographical maps?

A. When it was first issued, I think. I think the original survey was made in 1883 or 1884, and I think the first edition of the sheet was published about 1884 or 1885.

Q. You were out there on that survey, were you not?

A. I determined the higher points by triangulation.

Q. You were not out there for the purpose of establishing State lines then?

A. Not at that time.

Q. When you got back here to the Department you sat down and made a chamber survey of Slick Rock Creek and ran the line down Slick Rock Creek?

A. I did not do that.

Q. Who did that?

A. I think the original map was made by Mr. Yates; that is my remembrance; Mr. Charles M. Yates.

Q. Where is he?

A. He is now connected with the United States Pension Office.

Q. Is he in the city?

A. I think not.

Q. Were you present when Mr. Yates arbitrarily ran that line down Slick Rock Creek?

Mr. MATTHEWS: I object to that because it assumes that Mr. Yates arbitrarily did something and there is no evidence to show that he arbitrarily did it.

Q. Were you present when he laid that line down on Slick Rock Creek?

A. No sir.

Q. Didn't you know, Mr. Gannett, that the government sheets prior to this one, which first appeared in 1884 showing a line down Slick Rock Creek, showed the line between the States to run along a ridge?

732 A. I do not think I ever examined any government maps before 1884.

Q. Were there any geological sheets issued by the government covering this territory previous to this one you have called the Nantahala quadrant?

A. There was none previous to 1883 or 1884. When I originally went down there in 1883 I had no good map at all to go by; there wasn't any in existence that I knew of.

Q. You had never seen one?

A. I had never seen a government map on a large scale like this.

Q. Had you ever seen a map that showed that line down Slick Rock Creek?

A. I say I hadn't seen any map at all. The only map I had was on a very small scale.

Q. Tell us what map issued by public authority or by private individuals that you have ever seen that lays the State line at the point in dispute along down Slick Rock Creek, according to North Carolina's contention in this case?

A. I think that would come under the questions you asked this morning.

Q. I want to know the particular map that shows the line running down Slick Rock Creek, outside of this government sheet that you say was made by Mr. Yates some time in 1884?

A. Oh no. I didn't say that Mr. Yates made any map like that prior to 1884. I say Mr. Yates made the original of this map about 1883 or 1884.

Q. Well now, I do not think you understand my question. Outside of this map, which is a copy of Mr. Yates' map, tell me what other map you know to be in existence which shows the line between the States to run up Slick Rock Creek from its mouth five miles?

A. I have a note here of a map examined in the Library of Congress as follows:

"A new map of North Carolina, constructed from actual surveys, authentic public documents, and private contributions, by Robert Brazier: Published by John McRay, Fayetteville, North Carolina, in 1833. Six miles equal one inch."

Q. When did you make that note?

733 A. I made that note, I think, last June some time. As I have it here it shows the line up Slick Rock Creek. I would be pleased to verify that.

Q. That is the only one?

A. I did not say it is the only one; no. That seems to be the only map I have a note of here.

Q. You saw many maps up there that showed the line to be on a ridge, did you not?

A. No. I would say that they didn't show the line definitely

anywhere because you could not tell from the map where the line was because they were on such a small scale.

Q. If this stream marked a creek on this map of 1821, which runs into the Tennessee River on the south side in the neighborhood of where the line crosses it is Slick Rock Creek, please point out to me Cheoah River on that map?

A. Cheoah River is not shown on the map. That map does not pretend to show all the streams. It apparently shows all the streams sketched in free-hand. From this creek which flows into the Tennessee near where the State line crosses southwest to the Hiawassee River, there are no creeks whatever shown eastward or southeastward of the main divide or main dividing line with the exception of Caney Creek; and we all know that there are actually a great many streams in that territory.

Q. That statement is upon the assumption that this stream here marked a creek is Slick Rock Creek?

A. No. I say it is a fact that there are a large number of other creeks in this territory which are not shown on this plat.

Q. All right. But if this stream marked a creek here is Cheoah River, then that stream or that river to the eastward of that line does not appear on this map, is that right?

A. I say that there are a great many streams that are omitted.

Q. But if that is Cheoah River, it is to the east of the line isn't it?

A. Yes, certainly.

Q. And Cheoah River is east of the line isn't it?

A. Yes, and a good ways east of the line; several miles east of the line.

734 Q. And no part of Slick Rock Creek is three miles east of the line, according to the North Carolina contention is it?

A. There might be some of the head streams of Slick Rock Creek three miles east of the line.

Q. Go back for a moment, Mr. Gannett, to that Sourwood in the Gap on the Hangover Ridge which is blocked, and tell us if the appearance where it was blocked did not indicate that that was done a number of years ago?

A. Yes, I think it was done several years ago.

Q. There are a good many marks on the Sourwood tree?

A. Yes sir.

Q. All of them are not of the same age?

A. No sir, I should say not.

Q. Returning to the controversy in the Tellico country, I see between the Tellico River and Jenk's Knob that you have indicated a number of trees by No. 105, No. 106, No. 108, No. 109, No. 110, and No. 111?

A. Yes sir.

Q. Did you block those trees?

A. No sir.

Q. You did not?

A. No sir, I did not block those personally.

Q. None of them ever were blocked, were they?

A. No. 105 has been blocked.

Q. Who blocked it?

A. It is said to have been blocked by Lovingood; and No. 104 is said to have been blocked by Fain, Lovingood, and Hyde.

Q. Were you present when Lovingood blocked any of those trees?

A. No sir.

Q. Then you do not know whether he did or not?

A. No, I was not personally present.

Q. So you and Mr. Burns just put on that map every tree from which a chunk had been cut, that Fain or Lovingood told you that they had blocked?

A. Jasper Fain was with me, and he pointed the trees out.

Q. Whenever he told you that that was blocked, and showed State line marks, you noted it?

735 A. Yes sir.

Q. And put it on the map?

A. Yes sir.

Q. You did not know whether it showed State line marks or not, did you?

A. I could not swear to it, but I saw the other trees that had the evidences of the old marks.

Q. Why didn't you block some one of those trees that you have noted here between this holly the so-called 86-mile tree, and Jenks' Knob?

A. One reason was because the ax marks were apparently not deep enough to go into the wood, and I did not want to destroy the tree entirely, or kill the tree.

Q. You could not tell whether they had gone into the wood until you had blocked it, could you?

A. Not for sure.

Q. That would have been additional confirmation that there was a marked line up Jenks' Ridge wouldn't it?

A. Yes sir.

Q. When a tree in that neighborhood has marks on it, it is pretty difficult to tell after they are 30 or 40 years, how old they are?

A. You cannot tell. If the marks are 80 or 90 years old, they are very faint indeed.

Q. The character of the mark on the tree, with respect to its being clear or faint, depends a good deal on the kind of tree, does it not?

A. Yes, of course.

Q. And where the tree stands?

A. Yes, certainly.

Q. Didn't you think it would have been pretty important to block one of these trees along Jenks' Ridge, there?

A. I judged principally from the fact that this course agreed so closely with this plat of 1821 that it left very little doubt in my mind that that was the way the line was run.

736 Q. I understand you are assuming that that was the line the Commissioners adopted?

A. I say it agreed with our plat. There was very little doubt about it.

Q. Have you ever expressed the opinion of the age of the marks on the holly down there, that they say is the 86-mile tree?

A. I think they certainly are old marks; original marks.

Q. But did you ever express the opinion that they were 89 years old?

A. I think I have. I do not remember expressing the opinion that they were a certain number of years old, 89 years old.

Q. Have you expressed an opinion that they were any older than 89 years?

A. No, I have not.

Q. You think they are just 89 years old?

A. I think, as nearly as I can estimate, that they are very old marks; somewhere about 80 or 90 years old; in that neighborhood.

Q. Don't you think it would have been rather illuminating and helpful to the determination of this question, if the Commissioners, in making their report, had put in a call like this: "Crossing the Tellico River between the 58th and 86th miles"?

A. Certainly. As I say, that report is very brief. Indeed, there are a great many things omitted that would be a great help to us today.

Q. That would have been just about as important a call or statement in the report as, "Crossing the Hiawassee River at the mouth of Cane Creek"?

A. It certainly would be important, except the Hiawassee River is a much larger river.

Q. I know; but the Tellico River is much larger than Cane Creek too, is it not?

A. I cannot swear to that, because I have not been at Cane Creek.

Q. Mr. Gannett, on page 409 of the record showing your examination in chief, you were asked this question, near the bottom of the page:

"What would be the altitude of the first peak on the south side of the river on the Fodder Stack Ridge?"

And your answer is:

"It would be 1,700 feet above the river."

737 A. Yes sir.

Q. Whereabouts is that peak?

A. You see it does not locate it there exactly. That is, by saying "How far from the river," that is a little indefinite. As I say, the question is a little ambiguous as to what is meant by the Fodder Stack lead.

Q. I suppose that you and counsel for North Carolina knew what you were talking about. I am trying to get you to point out to me where that peak is that you say is 1,700 feet above the river on the Fodder Stack lead.

A. There is a peak on the main lead to Fodder Stack about one mile west of the river that is approximately 1,700 feet above the river.

Mr. MATTHEWS: You mean southwest?

A. No; according to this peak that he refers to, it is directly west.

Mr. MATTHEWS: That is in the Little Fodder Stack region?

A. The Fodder Stack lead by way of Little Fodder Stack.

Q. And Stiff Knee?

A. Yes sir.

Q. How far west of Slick Rock?

A. That is about a mile west of Slick Rock.

Q. So it has nothing at all to do with the North Carolina contention in this law suit?

A. If that is the *the* point referred to.

Q. Now, examine your testimony at the bottom of page 409 and the top of page 410 for yourself, and I will ask you this question: You state, in substance, that looking from the first peak north of the river you would be on ground about 1,300 feet above the river, do you not?

A. Yes sir: on the first and main peak.

Q. Now you say that looking across to the Hangover Ridge or lead, the first peak above the river is about 800 feet above it?

A. Yes sir: that is that bluff directly across the river.

Q. Then you were asked that question that I read to you a while ago—"What would be the altitude of the first peak on the south side of the river on the Fodder Stack Lead"? And you answered: "It would be 1,700 feet above the river." Then you were asked
738 this question: "So that standing on that peak north of the river, 1,300 feet above the river, then the first peak on Big Fodder Stack would be 4,000 feet?" And you say that the one on Hangover Ridge would be lower than that.

A. Yes sir. The first one or Hangover?

Q. Yes, sir.

—. ——.

Q. And then you were asked the further question: "How much lower"? And your answer is: "500 feet." That is the way you gave it.

A. That is the way it is printed.

Q. Do you mean to say that there is any peak on Big Fodder Stack that is 4,000 feet above the river?

A. Well that statement of 4,000 feet refers to sea level.

Q. You refer to Big Fodder Stack being 4,000 feet above the sea level?

A. Yes sir.

Q. Big Fodder Stack is approximately seven miles from the river, according to this Burns map, is it not?

A. Perhaps six or seven.

Q. Does it not measure out just seven miles on Burns' map from the river, or, to be exact, 6.67 miles?

A. I think it does, according to my remembrance.

Q. And then you have only an elevation above sea level of something like 4,000 feet?

A. That is the summit itself: the main summit, as has been previously testified to, if 4,300 and plus something.

Q. And that is above sea level?

A. Above sea level.

Q. But now, following the Hangover Ridge or lead from the river at the distance of between five and six miles, you get an elevation of something over 5,000 feet above sea level and something like 4,000 feet above the level of the river, do you not?

A. Yes sir.

Q. So that these answers to these questions in your examination in chief were rather misleading, were they not?

A. In that answer which stated 4,000 feet, the phrase
739 "above sea level" should have been in there. 4,000 feet above sea level should have been in there.

Q. But this peak on the Fodder Stack lead that you referred to as being 1,700 feet above the river, is not on the line of the North Carolina contention at all, is it?

A. No sir.

Q. And then it had nothing to do with the settlement of this controversy?

Mr. MATTHEWS: I object to that on the ground that it is asking the witness to arrive at a conclusion and to solve a proposition of law.

A. In that particular locality, the North Carolina contention, the line follows up the Creek.

S. S. GANNETT.

Subscribed and sworn to before me this 19th day of January, 1911.

[SEAL.] FREDERICK S. TYLER.
Notary Public, D. C.

Thereupon at 4:15 P. M. the further taking of testimony was, by consent of parties, adjourned until 9:30 A. M. Friday, January 20, 1911.

WASHINGTON, D. C., *January* 20, 1911.

Met pursuant to adjournment, the same counsel appearing for the parties as on yesterday.

S. S. GANNETT, the witness on the stand at the last adjournment was recalled for further cross examination.

By Mr. CATES:

Q. Mr. Gannett, it is the Murphy sheet of this United States Geological Survey map which shows the line between the states around the head waters of the Tellico River, is it not?

A. It is.

Q. And the general course of the line around the headwaters of the Tellico River, as shown on this Murphy sheet conforms practically to the Tennessee contention, does it not?

740 A. That is my understanding. It does not conform to the plat of 1821 though.

Q. It conforms to the plat of 1821 in showing the boundary line altogether, east of the headwaters of the Tellico River, does it not?

A. It does in that respect.

Q. Now I will ask you to state if according to this government map, the Murphy sheet, the headwaters of the Tellico River do not rise close to and but little west of the McDaniel Bald?

A. Yes.

Q. And according to this government survey map, the ridges west of the line run almost at right angles with the line, do they not?

A. Well, yes; the ridges start off, we will say at right angles to the main divide.

Q. And particularly is that so with the ridge just southwest of the headwaters of the Tellico?

A. Well, it starts off at right angles, yes, sir, and then afterwards there is a bend in that ridge.

Q. Now I will ask you if the ridges as shown on the map of 1821, just west of the line, do not stand at about right angles with the line?

A. The ridges are not joined to the main divide as shown on the plat of 1821 but the portions of the ridges shown are at right angles to the main divide without actually joining the main divide?

Q. Now on yours and Burns' map, complainant's Exhibit "D", you do not undertake to show the ridges?

A. No, sir; the ridges are not shown; just some of the creeks.

Q. In running this so-called state ridge, as described by you, did you notice immediately north of it a ridge which is called Rough Ridge?

A. Well, I think I would not describe it as being immediately north; I would say more nearly west.

Q. Well, north and west?

A. Well, west and north. There is a ridge there, I think, known as Rough Ridge.

Q. And it runs very nearly parallel with State Ridge, does it not?

741 A. Yes, sir.

Q. Did you run that Rough Ridge at all?

A. No sir, I did not go on that ridge.

Q. Did you have time last night to make up a statement of your notes of survey which I asked you to exhibit with your deposition?

A. No, sir; I did not. As I understand, you asked to have a copy, that is the courses and distances between stations.

Q. Yes.

A. From the mile stone 101 to Laurel Top?

Q. Yes. Then I asked you for a copy of Mr. Burns' notes in your possession between the turnpike on the north side of the river and the Hemlock.

A. Yes, sir.

Q. Now, did you run any other portion of the line yourself?

A. Well, not completely, that is, I say I tested portions of Mr. Burns' line and I identified the trees along the line from the station marks.

Q. Have you a copy of Mr. Burns' notes running from the mouth of Slick Rock Creek, up that creek about five miles, and then turning

to the right and following a spur of Fodder Stack Ridge, to the top of Fodder Stack Ridge?

A. Well, I had a copy of those notes at the time I was in that country.

Q. Have you a copy of them now?

A. Yes, sir.

Q. A copy of them was furnished to you by Mr. Burns?

A. This is the original note book (indicating).

Q. Are these the notes that you tested going from the mouth of Slick Rock Creek up to the top of Fodder Stack Ridge?

A. Yes, sir.

Q. And then from the top of Fodder Stack Ridge, southeastwardly to Junction?

A. Yes, sir.

Q. Please file a copy of those notes showing that line from the mouth of Slick Rock around to the junction according to the North Carolina contention, and make it Exhibit "X", to your deposition.

742 A. Of course you understand it will take some little time to make a copy of those notes and verify the copy, that is in the way you want the notes by courses and distances.

Q. Well, do it as soon as you can with convenience to yourself, and file them with the Commissioner as Exhibit "X".

A. Do you want simply the notes of course and distance, or including the trees that are noted?

Q. I simply want the courses and distances. Yes, you can put in the trees that are called for in the notes themselves. Mr. Gannett, is Mr. William R. Hopkins in the city, do you know?

A. Not to my knowledge. I do not know where he is.

Mr. MATTHEWS: He is on the sea. He is on his way to London.

Mr. CATES: That is all.

Redirect examination.

By Mr. MATTHEWS:

Q. Mr. Gannett, you gave yesterday a number of courses and distances, in the first place, down in the neighborhood of Tellico, and afterwards north of the River, and gave some explanation of some apparent black marks on the map other than the so-called mile circles. State in the first place on what scale that map of 1821 is drawn.

A. It is marked 800 poles to an inch.

Q. How many feet are 800 poles. You may look at that calculation and see if that is right. (handing witness a paper).

A. It is 13,200 feet to an inch.

Q. Then 132 feet would be one hundredth of an inch on that?

A. On the plat, yes sir.

Q. Now, I notice that on the north side of the river where you spoke of 31 calls, you gave those separate calls?

A. Yes, sir.

Q. And they ranged from 79 feet up to 1367.6 feet.

A. Yes, sir.

Q. But the majority of them, as I took them down, were between 79 feet and 500 or 600 feet.

743 A. Yes, sir; comparatively short sights.

Q. Now, could you delineate on a map of that size a scale without the use of the finest graver's tools, spots indicating such distances?

A. Well, no; you could hardly cover a pinpoint on that scale—that is, of course, in plotting on that scale the tendency would be to include several sights in one course as shown on the plat.

Q. Is there anything shown on that map, assuming the proper scale as indicated on it, that is unusual in drawing lines, mile lines, in mountain surveys?

A. Well, I would say there is nothing particularly unusual for a plat made at that time; that is, it is evidently a plat showing only in a general way the summit of the mountain and some of the streams and rivers. No one could claim that it is an absolutely accurate plat, but as I say, in a general way it shows the course of the line and of the main divide.

Q. Is it customary in mountain surveying to sight from one common object to another and then mark around the meanderings of the ridge itself?

A. Yes, sir; in a survey through such a rough country that would be the customary way to do it, at that date, 1821.

Q. Have improvements been made in surveying and map-making country of that kind since that date?

A. Yes, sir, there certainly have been great advances in that branch of civil engineering in the last 80 or 90 years.

Q. What would you have expected in running a line depicting it at that early date by local surveyors, considering the settlement of the country at that date?

A. Well, I should expect a map that is similar to this plat of 1821. The drawing is rather crude, but as I say the general course of the main divide agrees closely—as close as you could expect on the scale—with the line as found marked on the ground.

Q. You spoke of a ridge standing on the north side of the river and looking over it south—or peak rather—some 1700 feet above the river in altitude.—Where is that peak. In what ridge?

A. Well, that is on the Little Fodder Stack Ridge. As I

744 remember the original question, it was the nearest high peak to the river; that is west of the river, and as shown on this topographic sheet, the Nantahala quadrangle, there is a summit 2800 feet approximately above sea level, or about between sixteen and seventeen hundred feet above the river.

Q. And that you say is on the Little Fodder Stack part of that range?

A. Yes sir, that is the nearest high peak to the river.

Q. About how far from the river is that?

A. That is about a mile. At that point it is directly west of a bend in the Little Tennessee River.

Q. Is that what has been designed as the Stiff Knee Peak?

A. I think it has been; it is certainly near the Stiff Knee Gap. The name is not given on this topographic sheet.

Q. Now, when you spoke of the general average height and bulk of the ridges on the south side of the river, I wish you would explain what you meant by the Big Fodder Stack being the greatest or furnishing the greatest average height, or height and bulk. What did you include in that?

A. I included of course the main leading ridge up to the big Fodder Stack, and it also has several very large leading spurs projecting from the main ridge. So that the total bulk or mass of that ridge would be greater than the ridge up to the Hangover, which is short as compared to the main Fodder Stack ridge.

Q. Then you meant by that, did you, that the Fodder Stack combined the two—the Big and the Little Fodder Stack?

A. Well, yes, besides other leading ridges that come up to the Big Fodder Stack Ridge.

Q. From where did they come?

A. Well, one especially directly west of the Big Fodder Stack summit. It is a very large ridge.

Q. Is that what is called Rock Ridge?

A. No, sir, I do not know that it is. I do not know what the local name for it is.

Q. You spoke of the Little Fodder Stack striking—that is the ridge striking the Tennessee several miles, as I understood
745 you, below the mouth of Slick Rock Creek. Is it not about from a mile to a mile and a half?

A. Well, yes. It is not over a mile; there are several prongs to that ridge and one prong or one leading ridge comes down to the river right at the mouth of Slick Rock Creek. As seen from the ridge north or east of the river, it is very abrupt and high.

Q. Do you know whether it comes in about opposite the mouth of Rabbit Creek?

A. No, sir; I do not know that creek.

Q. Did you ever go down into that locality and go over the Little Fodder Stack?

A. No; I have not been over the Little Fodder Stack.

Q. Now, will you not give us at points where you can obtain it, or easily calculate it, the altitude of the Little Fodder Stack up to where it joins the Big Fodder Stack?

A. You mean taking a certain distance from the river up the Little Fodder Stack?

Q. Yes, say that first mile, where you say that 1700 or 2700 feet peak is?

A. Well, at a point say one mile west of the mouth of Slick Rock the Little Fodder Stack ridge is 1700 feet, approximately, above the river.

Q. Is that on the Tennessee River, or how near the Tennessee River?

A. That is about a mile west of the river.

Q. I thought you said west of Slick Rock.

A. It is the same thing. That is where the Slick Rock runs into

the River. It is the mouth of Slick Rock, and two miles west, I will say, is a gap, and at that point it is 1400 feet above the river. Then the Little Fodder Stack, which is about three and a half miles west of the river in a straight line, the elevation given on the atlas sheet, 3687 feet, or very close to 2580 feet above the river.

Mr. CATES: You say that is three and a half miles?

The WITNESS: Yes, sir, approximately, in a direct line.

(By Mr. MATTHEWS:)

Q. You spoke of west. Did you mean west or southwest?

746 A. In this particular case we will say Little Fodder Creek is very nearly due west of the mouth of Slick Rock Creek where it runs into the Little Tennessee River. Then the ridge turns directly south, or nearly south. So the next point, as measured around the ridge, would be say four and a half miles from the river. The elevation is 2400 feet above the river.

Q. Above the river?

A. Above the river. Then the next summit is the Big Fodder Stack, which is about 3200 feet above the river.

Q. Did you say about 4200 feet?

A. About 3200 feet above the river.

Q. Now you are familiar, as I take it, also, with that ridge that in coming northeast shelves off and reaches the mouth of Cheoah River. I wish you would give us the altitudes of that commencing at the mouth of the Cheoah and going back mile by mile until it becomes coincident with the Hang-Over.

A. The main leading ridge from Hang-over, which you refer to, I think runs directly eastward from Hang-over and reaches the Cheoah River about five or six miles above its mouth.

Q. Is there not a ridge that is continuous down to about its mouth?

A. Not the main leading ridge

Q. Well, give us the altitudes of that main leading ridge, and then describe more fully, and in detail, what part of it goes down to the mouth of the Cheoah River, and what the nature of that ridge is.

A. In the first mile from where that ridge reaches the Cheoah River, the ridge rises 700 feet.

Q. From the river?

A. From the river.

Mr. CATES: From what river?

The WITNESS: From the Cheoah River. At a point two miles from the Cheoah River that ridge rises 1500 feet.

Q. That is above the river is it?

A. Above the Cheoah River. At a point three miles from the Cheoah River the leading ridge rises 2460 feet above the

747 Cheoah River. At a point four miles from the Cheoah River the ridge is 2000 feet above the river, that is, there is a gap in the ridge at that point; and at a point five miles above the Cheoah River the ridge is 2900 feet above the river; and at a point six miles above the river, that leading ridge is 3200 feet above the

river, and when you reach the Haoe, which is on the main Hang-over ridge or lead, that point is 3400 feet above the Cheoah River. So that the average elevation of the ridge, I will say, is higher than those other ridges that we have been considering—the Hang-over and the Fodder Stack ridge.

Q. Now is there a ridge or spur that goes between that and what has been called the Hang-over ridge and strikes about the mouth of the Cheoah River?

A. Yes, sir; there is a spur down there on Hang-over ridge at the mouth of the Cheoah River.

Q. And how is that in point of elevation?

A. Going up that ridge in the first mile a person would rise 700 feet.

Mr. CATES: From what?

The WITNESS: From the foot of the ridge which butts into the Cheoah River near its mouth, and in two miles the rise is 1500 feet. In three miles the rise is 2800 feet.

Q. Those are all from the river?

A. From the river, near its mouth, and in four miles the rise is 3300 feet above the Cheoah River, and at the Hang-over proper, the rise is 3900 feet above the Cheoah River near its mouth.

Q. Now, for a minute going back to these black dots—I believe they are black on the original——

A. They are colored black on this tracing.

Q. Have you any means of knowing who put those there or when they were put there?

A. No, sir.

Q. Is there such regularity about them, from what you know of the courses and distances, as to lead to the inference that they had been put there to show changes in courses?

A. Well, that would be the inference, that they were
748 placed there to show the points where there is an angle in the line or change in the course.

Q. Is there such a uniformity from one end of the line to the other as to indicate that from what you know of the changes in various parts of the land, from actual survey or testing surveys?

A. Well, that is the way they appear to be shown on this plat or this tracing of the plat of 1821.

Q. You are now looking at the certified tracing?

A. Yes, sir.

Q. Suppose you look at this photographic copy of the original?

A. (After examining.) Of course on the photographic copy they do not appear so distinct, and not always right on the lines; they are sometimes a little to one side.

Q. Now taking this portion, for instance, north of the river, which I understand is an undisputed portion of the line from fifty-nine-mile tree down to the hemlock from the courses and distances, and the multitudes of them that you have given, do you find such number of regularity of these marks as would indicate that that was their purpose as you have designated it?

A. Well, they do not show so distinctly on the photographic copy;

that is, they do not appear right at the angles where they do on this tracing.

Q. Now leaving that, and going back to the ridges, do you recollect a ridge that runs off to the left of the Smokey Mountain ridge to the north of the river at or about the sixty-fourth mile circle down toward the point opposite the mouth of the Cheoah?

A. Well, I recollect that the Smokey Mountain forks separate into several ridges, as it approaches the river.

Q. Well, is the one I spoke of one of those ridges?

A. I think it is, yes sir.

Q. Did you go along that ridge at all?

A. No; I went down the main ridge where I found the state line marked.

Q. How does that ridge that runs off to the left that I spoke of compare in altitude—average altitude—with the main Smokey Mountain ridge of the river coming directly to the Tennessee River?

749 A. They all have about the same average altitude.

Q. But for the Tennessee River that would seem to be a continuation of the ridge that you have spoken of that comes down from Hang-over on the south side, or southwest side, and comes out at about the mouth of the Cheoah River?

A. Yes, sir.

Q. In looking over across the river to the south you have mentioned the Little Fodder Stack and the Big Fodder Stack and the Hang-over ridge and the ridge that runs off of the Hang-over down to about the mouth of the Cheoah, and another ridge to the south or southeast of that that strikes the Cheoah some four or five miles above its mouth. Are there any other ridges over there that branch out and approach the Tennessee River especially from the Hang-over?

A. Well, yes sir; there are several leading ridges down from the Hang-over northeastwardly.

Q. Is there one that approaches the mouth of the Slick Rock?

A. Yes, sir; that is, it is east of the Slick Rock Basin, and the foot of it is near the mouth of Slick Rock Creek.

Q. What appearance does that have with reference to the Hang-over ridge?

A. That is a ridge leading up to what is called the Hang-over.

Q. Does it seem to be continuous with it?

A. Well, it is, as I say, a ridge with several gaps in it like the Sourwood Gap and Slick Rock Gap.

Q. About how long is it, taking it from the neighborhood of the mouth of the Slick Rock to where it seems to become continuous with the Hang-over?

A. The total length of the ridge is approximately six miles, but as I say the lower end of it is broken by several gaps.

Q. Could you give us samples of the altitude of that ridge at various distances, from your photographic map?

A. I think those were given yesterday; I think those samples would appear in the testimony taken yesterday.

A. I am not talking now about the ridge that is claimed to start right across from that hemlock tree, but that portion of the
750 ridge that runs down to about the mouth of the Slick Rock. Is that not just about a mile long?

A. The whose base of it, you might say the base of the bluff, is about a mile long at the summit of the ridge.

Q. Taking that mile, what is its character as to bulk and altitude?

A. That mile, as I say, rises abruptly from the river and is about 700 feet above the river.

Q. And does it rise or fall?

A. Then you go over a little summit and down into a gap, and then over another summit.

Q. Now what, with reference to the ridges and altitudes and spurs, is the south or southwest part of the river all the way from Slick Rock down to the mouth of Cheoah River?

A. Well, there are a series of spurs coming down to the river—that is, of course, each ridge forks out into several prongs.

Q. What is the general appearance of the south bank of the river itself, the Tennessee River, as to bulk and altitude?

A. It is very steep along there, so that it is difficult to walk or survey a line. There are bluffs all along until you reach the mouth of Slick Rock Creek.

Q. I call your attention to the report of the Commissioners of 1821 made to the Governor of the State of Tennessee, and this language of it:

"And crossing the Tennessee River at the distance of sixty-five miles from the beginning."

Now, where with reference to the Tennessee River do you understand, as the surveyor, and from what you know of the surveys and various maps, does that land you, on which side of the river?

A. Judging from this plat of 1821 it lands you on the south side of the river at the mouth of a creek.

Q. According to Burns' map, Exhibit "D," where does it land you?

A. Of course neither Mr. Burns or myself have actually surveyed the line for sixty-five miles ffrom the beginning.

Q. No, but you took it, for instance, at the 59-mile tree as a conceded point, did you not?

751 A. Yes, sir.

Q. Now, where would the end of the sixth mile from that land you—I mean simply on which side of the river would it land you?

A. It would land you on the south side of the river. The actual survey line of Mr. Burns and myself makes the distance to the south bank of the river as six miles and two one hundredths, and the corresponding mile circle as shown on the plat of 1821; that is it would be exactly six miles and they coincide closely on the south bank of the river.

Q. Did you see the Hale map, or know of the testimony of Mr. Hale as to where the sixty fourth mile tree was?

A. No sir, I have not read his testimony, I do not think—at least I do not remember anything about that point.

Q. Well suppose the sixty-fourth mile tree on the survey of Miller and Hale was sixty-seven hundredths of a mile northeast of the river and crossing directly over after reaching that hemlock, as claimed by the State of Tennessee, where would the end of the sixty-fifth mile land you—on which side of the river would you be then?

A. As I understand the question, you would be on the south side of the river.

Q. Then in any event, as I understand it, the river would be behind you?

A. Yes, sir.

Q. Now I call your further attention to these words in that report:

"From Tennessee River to the main ridge, and along the extreme heighth of the same to the place where it is called the Unicoy or Unaka Mountain.

Now as a surveyor, what would the words "from Tennessee River to the main ridge," with the river behind you, indicate?

A. Well, that you went to the main ridge by the most feasible or practicable route.

Q. Would it indicate to you that when you crossed the Tennessee River you were then at or on the main ridge?

A. No, sir.

Q. From that language, and from what you know of the ground and the surveys, is there any main ridge until you reach
752 the junction?

A. No sir, there is no ridge that could be called the main ridge—that is from the junction northward, northeastwardly and northwestwardly. There are several ridges that branch out or fork out, and each one of those forks you will see still spreads out into other forks or prongs, so that you could not say that there is any one main ridge until you are at the junction.

Q. Is there any similarity between those ridges—for instance, now, coming northeast after you leave the junction to the fingers on a person's hand?

A. Well, yes; it is a good comparison. They spread out or fork out like fingers or toes. There are several what might be called leading ridges but no one distinct main ridge, and as I have stated previously, what is really the largest ridge, leads off to the eastward, directly eastward, and that reaches the Cheoah River, for instance, perhaps six miles east of Hangover but neither State contends that the line went over that ridge.

Q. Please look at that photographic copy again of the original map of 1821 at the point where it seems to cross the Tennessee River and along its route, and see if you do not perceive a line apparently in the center of some shading.

A. There is a line that apparently follows a creek.

Q. No; now just leave the creek out. I am just asking you now as to what you see on the map with reference to that line?

A. This is a line in the center of the shading.

Q. Now, as a surveyor, which would you take to be the State line, the whole line and shading, or the line itself in the center of the shading?

A. I would take the black line in the center of the shading.

Q. You were asked yesterday to state how far west of the mouth of Slick Rock, according to the map of 1821, that line struck. I will ask you where the line that you have just mentioned on that photographic reproduction of the map of 1821, strikes in the mouth of Slick Rock?

A. It strikes exactly at the mouth of the creek and follows up that creek for about a mile and a half.

753 Q. If the certified copy then put that line west of the mouth of the creek, what do you say as to its correctness as compared with the original?

A. Well, I should certainly accept a photographic copy in preference to a tracing which might have errors made by the draughtsman.

Q. It is a fact, is it not, that they do not show the landing at exactly the same identical point with reference to the mouth of the creek, is it not?

A. Yes, sir, there is a discrepancy in that respect.

Q. Now, Mr. Gannett, suppose from the sixty-fourth mile circle on the northeast of the river, the original field notes of the surveyor of 1821 should show a course south 75 degrees west, for exactly 320 poles, where would it land you?

A. It would land you across the river near the mouth of that creek.

Q. Have you tested that last so-called straight line from sixty-fourth mile tree to where it crosses the Tennessee River, and seems to strike about the mouth of the creek, and can you state its course, and about its length?

A. Well, I have not the exact figures. We might have that course, but I remember that I did test it and it agreed approximately with the course.

Mr. CATES: What course?

The WITNESS: From the sixty-fourth, as I understand you—the sixty-fourth mile tree southwestward.

Q. Yes, 75 degrees?

A. It agreed closely or approximately with the plat of 1821.

Q. What I am asking you about is whether or not the plat of 1821 agrees or not with the course and distance that I have given you—75 degrees southwest for a mile?

A. Yes, sir; that is as I remember it.

Q. And that, you say, would strike at or about the mouth of the creek there? ?

A. Yes, sir.

Q. And from your knowledge of that survey there, what creek is that?

754 A. It is now known as the Slick Rock Creek.

Q. Now suppose from the sixty-fourth mile tree you look

down toward the mouth of the Cheoah River, what direction are you looking then?

A. You are looking southeast.

Q. And on which hand, as you approach the river—which of your hands?

A. To the left.

Q. And when looking at Slick Rock, which hand are you looking at?

A. To the right.

Q. Could you give us a rough estimate of about how many degrees east or west of south that would be to run to the mouth, or near the mouth of the Cheoah River?

A. Well, it would be approximately south 50 degrees east.

Q. Do you know about how far the mouth of the Cheoah River is from that point in a straight line—the 64th mile circle?

A. It is over a mile.

Q. Could you reach the mouth of the Cheoah River at all then by going 75 degrees east of south for a mile?

A. No, sir.

Q. Would you state approximately where that would land you?

A. It would land you north of the Tennessee River, at something over a quarter of a mile from the mouth of the Cheoah.

Q. A quarter of a mile in what direction?

A. Northward. From the mouth of the Cheoah? You mean southeast, do you not?

Q. I meant to change it just from west to east. Now if the field notes of the surveyor of that survey of 1821, laid down a course from the 64th mile tree, south 75 degrees west 320 poles, and the line on the map of 1821 corresponds with that, what would you say as to those surveyors having mistaken the Cheoah River for the Slick Rock Creek?

Mr. CATES: Counsel for the State of Tennessee objects to the question, and any answer thereto, because it would be giving the mere opinion of a supposed mistake that the surveyors in 1821 may
755 have made in delineating their survey on the plat of 1821.

Mr. MATTHEWS: I will add to that that I disclaim any desire to show that the surveyor of 1821 may have made a mistake in delineating it. But there is a great deal of testimony on the part of the State of Tennessee already in the case that the surveyors may have made various mistakes in the courses and distances and in reporting the same.

A. I would say that they did not mistake the Cheoah River. That course would certainly bring them to the mouth of Slick Rock Creek.

Q. Now suppose the field notes of that survey of 1821 made a notation opposite that course and distance that I have spoken of of 75 degrees west of south, 320 poles, crossing the Tennessee River to a large white pine on the south side of the river at the mouth of a large creek, sixty-fifth mile—what, with reference to the Slick Rock Creek and Cheoah River is the pertinence of that language?

A. Well, today I would recognize it as being the mouth of Slick Rock Creek.

Q. I understand you that if there was a mistake, and that should be 75 east, 320 poles, the 65th mile would not reach the Cheoah River nor the Tennessee River at all?

A. No sir, it could not be on the bank of any river or creek.

Q. Now suppose in those same field notes the next course said south 80 poles up said creek, what would be the pertinency of that with reference to those two streams?

A. Well, it would correspond with the general course of the Slick Rock Creek in preference to Cheoah River.

Q. Suppose that was 75 east of south, 320 poles, and then south 80 poles, could that go up Cheoah River?

A. No sir.

Q. Suppose that continued, according to those notes, up said creek with various courses and distances to the end of the 67th mile at Cheogee Path where would that be, do you know?

A. Well, that would be near a trail which now goes through the Slick Rock Gap, I think it is called Tellassee Trail. That is about two miles above the mouth of the Creek.

Q. Now, suppose at the end of the 69th mile, according to
756 those notes, they reached a maple on the east side of said creek, and at the end of the 70th mile a birch on the west bank of said creek, what creek would you take it to be?

A. I would still take it to be Slick Rock Creek.

Q. Now from the point in the testimony, I mean, where I called your attention to the south 75 degrees west for 320 poles, from the 64th to the 65th mile, suppose all of the courses down to the point at which I have now arrived at the end of the 70th mile were south and west, I will ask you, as a surveyor, whether you could be going up the Cheoah River?

A. No, sir, not possible.

Q. Would you, if you did go up the Cheoah River—or if they did—would they be approaching or going away from the Hangover ridge?

A. They would be going away from it.

Q. Do you recollect whether, where I have just called your attention to a maple on the east side of said creek at the end of the 69th mile, and a birch on the west side of said creek at the end of the 70th mile—that point corresponds with the point that General Cates called your attention to yesterday, that it seemed to be on both sides within a certain distance of that creek—as I understood him to say about four or five miles from its mouth?

A. I think it is in the same general locality.

Q. Now, where is Citico Creek?

A. That is west of the Fodder Stack ridge.

Q. Do you mean it rises west?

A. On the west side of the Fodder Stack Ridge.

Q. It sheds, does it not, to the west?

A. It runs to the westward or northwestward.

Q. Now I have been calling your attention to a creek which has

been designated as having its mouth 320 poles from the 64th mile tree in a course south 75 degrees west, and then to get to the 66th mile up said creek and at the maple at the end of the 69th mile on the west side of said creek, and at the end of the 70th mile a birch on the west bank of said creek. Now if those notes said at the end of the 72d mile, after still continuing southwest, according
757 to the courses and distances, they reached a white oak on a ridge between the aforesaid creek and the Citico Creek, on what would that be, or between what creek and the Citico Creek?

A. It certainly would be between the Slick Rock Creek and Citico Creek.

Q. And about how many miles from the nearest point of Cheoah River?

A. Well, at least five miles.

Q. To what point on the Cheoah do you take to go that distance?

A. Well that would be a point say a mile above its mouth.

Q. Well, but take a point, if you can get it from Burns' map, or that map, seven miles above its mouth?

A. You say it is seven miles up the creek from the 65-mile tree?

Q. Yes to seven miles up Cheoah River from its mouth?

A. That would be about ten miles from Cheoah River.

Q. In what direction would the Cheoah River, at seven miles from its mouth, be from that—the general direction.

A. Well, that would be about east.

Q. And about how far would that point, seven miles up the Cheoah River, be from the Hang-Over ridge?

A. That would be about six miles, say, from the Hang-over ridge.

Q. In what direction?

A. Eastward.

Q. When you spoke of these distances from the state line as claimed by North Carolina, to that creek that we have called the Slick Rock Creek, did I understand you to mean that the line did not follow the creek at those points, or that the creek was incorrectly sketched on that map?

A. The creek is incorrectly sketched on this plat of 1821; that is, it swings off to the eastward too much.

Q. From what do you know whether it is correctly or incorrectly sketched—from what information?

A. Well, I have been along the creek. I know from actual knowledge in visiting the creek and having been along the creek, I know the general courses of it.

Q. Now, going down to the Tellico, what was it you said
758 to Congressman Moon, that you were asked about yesterday at his interview with you, and what did it concern—what part of the line?

A. It did not concern the Slick Rock disputed portion of the line. It concerned the Tellico portion of the line and the Ducktown region.

Q. What did you say to him about the Tellico region and the Ducktown region?

A. I told him that theoretically the original commissioners should have followed around the head of Tellico, and they should have fol-

lowed the summit of Frog Mountain so that by rights all of the Ducktown region, for instance, belonged to North Carolina instead of Tennessee, and that Tennessee had so far gotten the best of the bargain, that is, she had all that valuable mining region around Ducktown.

Q. You did not say anything then about the Slick Rock contention?

A. Well, I did not say that the line should have gone up Hangover lead. I am positive about that.

Q. Well, what if anything, did you say about the Slick Rock contention?

A. I said that the line actually went up Slick Rock Creek, and it actually went down the state ridge and up Jenks' ridge, as by my marks found on the ground—the old marked trees—and if the Commissioners had followed their instructions they would have, from the 101st mile post, continued a line along the summit of Frog Mountain and not have run directly south, as they actually did.

Q. If you will excuse me a moment I will go a little back. There is one thing that I forgot and which I will finish up first. With reference to the end of the 72nd mile, Mr. Gannett, where I mentioned a creek, the aforesaid creek and Citico creek—suppose the course for the next three miles, and distances, are these: South 30 degrees, east, 200 poles; south 60 degrees, east, 120 poles to the end of the 73rd mile, at a red oak, south 100 poles——

Mr. CATES: Do you mean due south?

Q. Yes; south 45 degrees, east, 100 poles; south 10 degrees, west 120 poles to a maple at the end of the 74th mile; south 25,
759 east 160 poles; south 10 degrees, east 160 poles to a beech, 75th mile, main mountain—now where would the end of those three miles land you?

A. At the Junction.

Q. Where were you at the end of the 72nd mile, about?

A. Near the Big Fodder Stack.

Q. And does the mention in that connection of main mountain have any weight with you in determining the meaning of the language that I quoted to you from the Tennessee River to the main ridge, contained in the report of the Commissioners?

A. The Commissioners evidently did not reach the main mountain then until they reached the junction ten miles from the river.

Q. Now going back to the Tellico, how many forks has the Tellico, to your knowledge?

A. Well, on the line as surveyed I actually crossed, I know, with the line only one fork on the Tellico.

Q. Which was that?

A. I think it is generally called the middle fork.

Q. Do you know as a matter of fact, whether or not there were other forks?

760 A. I would say that I could. I could see the drainage basin of course without actually seeing the stream itself, and I could see the little valleys that might contain the forks of the Tellico.

Q. Now that ridge that is called the state ridge—you recollect that do you.

A. Oh yes sir.

Q. What is the connection of that with the ridge that runs around, according to the Tennessee contention; is it continuous or broken?

A. Well it is going southward, or southwestward from Laurel Top. The state ridge is the highest and most prominent ridge and would naturally be taken as the main ridge. The water divide itself is lower, that is it bears off to the southeastward, and is considerably lower than the state ridge.

Q. You spoke—and that reminds me of it—yesterday several times of what the drainage showed on the map of 1821. What did you mean by the word drainage; what significance has that?

A. I simply mean all of the water courses, that is the rivers and creeks and smaller streams.

Q. You were asked if the map of 1821 did not show that the line did not cross the Tellico River or any fork of it? Does it show that, any more than a mere inference from the fact that no branch of the Tellico River is found on that map cutting through the state-line?

A. This old plat did not have the Tellico River extended its full length to the southeastward.

Q. Does it show the middle fork on there at all?

A. It shows two principal forks; it does not show all of the forks which are known to be in existence.

Q. Do you know how much further, say from County Corners around to Jenks' Knob it is by the Tennessee contention that by the state ridge?

A. It is practically twice as far around, that is, you could observe when you were on the state ridge—you can look around that divide by Rocky Knob and McDaniel Bald and see for yourself that
761 it is at least twice as far around that way.

Q. Well, could you say about the miles, from your observation?

A. I say I did not actually survey the line around there. I surveyed the line down state ridge.

Q. Does a surveyor's eye become expert in approximating distances from simply the object?

A. He can judge distances very closely, and the course is entirely different, that is at County Corners, for instance, the main divide turns to the southeast and almost exactly at a right angle from the general trend from the state ridge; that is, instead of running south——

Q. What is the general trend of the line that runs over the state ridge?

A. That is southwest, at the County Corners, and as I say the main divide turns almost exactly southeast for a few miles.

Q. The course then over the state ridge would be in the general trend, would it not, of the previous part of the land?

A. Yes sir, the general trend is southwest.

Q. But you have observed the report of the Commissioners of course, where they say in a southwest trend or direction?

A. Yes sir.

Q. How do you recollect a holly tree that was said to have "86 M." on it?

A. Yes sir, very distinctly.

Q. About where is that with reference to the Tellico River, or the middle branch or fork of the Tellico?

A. It is several hundred feet southward—southwestward.

Q. Going along the state ridge then before reaching that tree, to get to it would you have to cross that middle fork?

A. Yes sir, going southwestward down the state ridge you would come to the fork of the Tellico.

Q. In going around in the other direction, according to the Tennessee contention, do you reach that tree?

A. No sir, you would not reach that tree at all.

Q. How far from it do you strike when you get into its neighborhood,—the nearest point?

762 A. The nearest point would be at Jenks' Knob. That is over a mile or a mile and a half.

Q. If the field notes that I have heretofore mention- speak of a direction from the 85th mile south by 60 west, 320 poles, and has this notation: "holly tree, 86th mile near the head of the middle fork of Tellico River," would that correspond with the North Carolina contention or the Tennessee contention?

A. It would correspond to the North Carolina contention—well, it would correspond to the tree that I actually saw on the ground near the fork of the Tellico River.

Q. You have said that you saw that tree. Does that description of the tree tally with what you saw—the kind of tree?

A. It is a holly tree marked "86 M."

Q. Can you describe the appearance of that mark.

A. Well, it had a very old appearance.

Q. Were the figures and letters perfect?

A. The "8" was practically perfect; the "6" was partly obliterated—that is the tree is rotten or decayed; so that a portion of the figure 6 had rotted away but the letter "M" which was underneath was practically perfect, so there was no doubt about its being the letter M.

Q. Could the figures and letter indicate anything else than what you have said, in your estimation?

A. I do not think they could.

Q. If you go around the ridge, according to the Tennessee contention, would you reach the 101st mile circle in the distance of 101 miles?

A. No sir you could not. It would certainly be several miles greater than 101 miles.

Q. You spoke of having Mr. Fain along with you?

A. Yes sir.

Q. Were you directed what to do by Mr. Fain, you where to find the line?

A. No sir, he came along as a witness to point out trees that had been blocked, and as a sort of guide too, it being a rough country, he

was a great help in that way as a guide as an aid in finding the routes.

763 Q. When you had your interview with General Davidson in Asheville, or with anybody else, were you told what line to find?

A. I was simply told only in a general way to go out and find the true original marked line, regardless of where it went and where it was.

Q. Was that what you tried to do?

A. That is what I tried to do, to find the original marked line regardless of where it was on the ground.

Q. And what you testified to then and what you found and reported was——

A. Was what I actually found, and I will say that it did not agree with my pre-conceived notion of where the line was.

Q. What were your pre-conceived notions?

A. My pre-conceived notion was that it went around the head of Tellico from the trees that I found and identified as original marked trees I feel certain that the line crossed at the head of Tellico, that is went down Jenks' ridge and along state ridge.

Q. Do you mean the marks simply or courses and distances?

A. From all the evidence I have been able to find, that is using this plat of 1821 as a guide to some extent, and especially from the very old marks which I found on the trees.

Q. You were asked yesterday about what you said with reference to certain maps that you found in the Congressional Library map department, and on page 399 of the record of this case as it was originally written, you appear to have said:

"I found a new map of North Carolina giving roads and distances from place to place by H. S. Tanner, 1845 showing the state-line crossing the Tellico River."

Then you were asked the following question and gave the following answer:

"Q. How about the Slick Rock vicinity?

"A. I have no special note as to that, but I can say that all of these maps showed the line up Slick Rock Creek, but on my copy the words 'but I can say that all of these maps showed the line up Slick Rock Creek' are erased."

764 Do you know who did that and when?

A. I know I corrected the copy which was sent to me so as to agree with my recollection of those maps. Of course I do not know who made the changes on this particular copy.

Q. Well did you make that correction on the copy that was sent to you?

A. I know I made that correction, yes sir; that is a right which I understand all witnesses have to make whatever corrections are necessary. This is simply a line drawn through that expression and you cannot identify simply by the line, by whom it was drawn.

Q. Look again at the map of 1821, please? You say that the hachuring shows a line just east of some ridge about two miles from

the river. Just what do you mean by that, and what ridge, if you can determine?

A. Do you mean where the line crosses?

Q. No; about two miles from the river?

A. And up the creek?

Q. Well, as it runs on the map?

A. I could not identify the ridge but there appears to be a ridge or bluff indicated there. There is a ridge or bluff on each side of the line.

Q. In that same connection, at that point, you were asked something like this, if the line showed on the extreme height of some main ridge dividing the waters to the Tennessee River. Explain a little more in detail what you mean by that, for you answered that the drainage shows. What do you mean by that answer—at that point in the Slick Rock region and a basin from two miles from the Tennessee River southwest—what does the drainage show, if anything?

A. Of course it only shows this one creek running into or emptying into the Tennessee River, that is east of the line and on the northwest, or to the northwest of the line it shows two large creeks or rivers, that is the Citico Creek and the Tellico River?

Q. The division of that drainage then would be not widely east of the Citico Creek, would it?

A. No sir, it is right near the Citico Creek, that is the Citico Creek heads close to this divide or line as shown on the ridge.

765 Q. What pertinency has your use of the word "drainage" in answer to these questions in view of any connection with any objects mentioned, and the courses and distances as shown by the map of 1821?

A. Well I used it simply — a descriptive term expressing the watershed of the streams and rivers that flow from this divide.

Q. Do you mean by the use of the word "drainage" or watershed, that those are controlling factors to the exclusion of the courses and distances and objects located in the report and on that map?

A. The drainage is the controlling factor with the dividing ridge, that is it is the dividing ridge between streams on each side.

Q. Does that drainange factor alter any of the testimony you have heretofore given about which is the main ridge and where it commences?

A. It does not alter it, no sir.

Q. I notice in the record in the last answer on page 398, running over to the top of page 399 on each page a change made—some words erased with ink. I will ask you who made those erasures?

A. The writing of the words that are written in look- like my writing. Then there are certain erasures, straight lines. I know I made similar erasures in the copy that I had, and so far as I know this identical copy. Of course I cannot swear to those straight lines that are drawn except that I know I made such corrections.

Q. You did make such corrections in the copy, whatever it was, that you had?

A. I did make certain corrections.

Mr. CATES: Let me ask a question right there The copy that you are referring to is the one handed to you by Mr. Matthews, counsel for the complainant, is it not?

The WITNESS: Yes sir.

Q. You spoke of Mr. Yates having made the contour map so far as the location of the state-line was concerned in 1882 or 1883?

A. Yes sir; he made the original map.

Q. From which this contour map in evidence here is a copy?

A. Yes sir, this was engraved, I think, from his original map.

766 Q. You were along as I understand it, to locate objects and take altitudes?

A. Yes sir, and especially to locate the higher points by triangulation.

Q. Do you know from what information Mr. Yates located that line?

A. No sir. I cannot state definitely except that I know that topographers usually consulted older maps that had been made previously, and in many cases they would consult state records where they could find such records of boundary lines—either county lines or state lines.

Q. Do you know whether your party looked for marked trees?

A. My party did not.

Q. Do you know whether he did?

A. No, of course I cannot testify as to what he did; I was not with him personally only for a short time.

Q. And in that short time you do not know whether he was looking for marks or not?

A. No sir; I do not think he was.

Q. Or getting together traditions.

A. No sir.

Q. You spoke of that Tellico region being a more open country than the Slick Rock basin?

A. No; the region near the Hiwassee River.

Q. Near the Hiwassee River, yes. Do you know from any source tradition or otherwise, about how long that had been settled up there?

A. Well of course I know from general historical knowledge that it had been settled up certainly much longer than the Slick Rock region because it is not so rough.

Q. The Slick Rock region is not settled up today, is it?

A. No sir; there are only one or two cabins there now.

Q. Did you ever learn why that so called state ridge was called by that name?

A. Excepting from tradition, that the line was run down that ridge, and it was therefore called the state ridge. That is the name that has been adopted. It is so called by the people that I met in that country.

767 Q. Old people?

A. Well, yes sir.

Q. When you were with Burns and had his maps or notes, were you governed by those or by your own investigation?

A. I simply used them as a guide, that is all. I wanted to check the notes for one thing to see if they were correct. I made an independent survey though, that is along state ridge and Jenks' ridge.

Q. Where is Grassy Top Peak?

A. It is only a short distance southwest of Laurel Top.

Q. On which ridge?

A. On the state ridge.

Q. How does it compare in altitude with any of the peaks around there?

A. It is much higher than the high peaks at the head of Tellico River, for instance. Grassy Top is 5200 feet high and McDaniel Bald which is at the head of Tellico River, is 4662 feet above sea level—Grassy Top being, as I have said, 5200 feet above sea level.

Q. Where is Huckleberry Knob?

A. That is about three miles northeast of Laurel Top.

Q. In the direction of Hang-over—in the general trend?

A. Well, in the general trend toward Hang-over. Yes sir.

Q. How does that compare in altitude with Hang-over?

A. That is the highest point—higher than any point in that section of the country.

Q. Can you give its altitude there?

A. That is over 5500 feet, as shown by the contour map.

Q. Where is Hooper Bald?

A. That is only about a mile northeast of Laurel Top; that is 5500 feet above sea level.

Q. Is that in the line toward Hang-over too?

A. Yes sir; that is in practically the main line towards Hang-over.

Recross-examination.

By Mr. CATES:

Q. This place that you have referred to and called Huckle-
768 berry Knob is how far east into North Carolina from the undisputed state line at Laurel Top?

A. It is about three miles.

Q. And it has no sort of connection with the state line?

A. The undisputed line was not run over Huckleberry Knob.

Q. Then it has no connection with the state line?

A. Except as showing the highest point in or near the state line.

Q. Some three miles away from the state-line?

A. Yes sir.

Q. Is this place that you have called Hooper Bald on the state-line?

A. Well, it is near the state line.

Q. And still over into North Carolina is it not?

A. Yes sir.

Q. How far?

A. I think it is actually about a mile.

Q. You were asked there to verify that statement by Mr. Burns, were you not?

A. Yes sir.

Q. And Mr. Burns is present assisting in your redirect examination?

A. Well, he furnishes notes, etc., yes sir.

Q. You were asked in your redirect examination by Mr. Matthews if, going to the southwest from Laurel Top, you would naturally follow the state ridge as the main ridge, and you answered—if not in exact words, in substance—that state ridge would naturally be taken as the main ridge, did you not?

A. It is higher, yes, and the general course being southwestward, corresponding to the general trend of the main mountain, the surveyor would naturally, or could naturally, be misled in going down that ridge in preference to turning directly southeast and following around the main divide around Tellico.

Q. You do not mean then that the state ridge is the main ridge, do you?

A. I do not say that is the main divide, no sir. It is not the main divide.

769 Q. It is not the main ridge, is it?

A. It is a leading or a main leading ridge.

Q. What did you mean then by stating that you could easily be misled into taking it for the main ridge?

A. As I stated, there is no dispute, and no question, about the fact that the main divide turns to the southeast and goes around the head of Tellico River. The state ridge is simply a very high ridge or leading ridge down from Laurel Top over Grassy Knob.

Q. The very use of the word "mislead" or "misleading" in the connection in which you used it would indicate that you do not regard the state ridge as the main ridge, would it not?

A. As I say, it is one of the leading ridges up to that big mountain.

Q. In your original examination, as it appears on page 411 of the copy of the record furnished the state of Tennessee, when you were being examined about the course you would take going southwest from County Corners, you were asked this question:

"Which would they naturally take going on the same way when they got to County Corners?"

Your answer was:

"They could easily be misled in taking the line down state ridge because it has the general appearance of the main divide."

You were then of the opinion then also that going down the state ridge would be misleading?

A. Well, yes, they would, as I say, if they once started down that ridge they would naturally keep down the ridge.

Q. Certainly, if they would go far enough they would keep down to the foot of the ridge where it flattens out?

A. Because it is so high and prominent and leading. It is a big back bone.

Q. And it is also misleading?

A. Yes sir, it is a leading and a misleading ridge.

Q. Now do you not know that a little way down that ridge southwest from Laurel Top and County Corners the Rough ridge
770 branches off, and that the rough ridge is a still higher ridge than the state ridge?

A. I doubt if it is still a higher ridge.

Mr. MATTHEWS: I object to all this testimony because this was cross-examination of our witness, and while I want to concede every courtesy to you Gentlemen I do not think as a matter of legal right you should go on as if it was your witness, and go over the same matter.

Mr. CATES: I disclaim any intention of making Mr. Gannett a witness for the state of Tennessee. I am merely cross-examining him about a particular matter that was brought out on redirect examination and testing his means of knowledge and information.

Mr. MATTHEWS: We object to it then on the ground that it is not proper to re-recross-examine our witness.

Q. I believe you told Mr. Matthews that after a conference with Mr. Davidson you were to go down and locate just where that line had been marked?

A. Yes sir.

Q. You also stated that you went on the ground with the pre-conceived idea that it ran around the headwaters of the Tellico River?

A. Yes sir, that is from the old maps that I had seen years ago.

Q. Now did you do anything at all to confirm your preconceived idea that the line run around the headwaters of the Tellico River, by running a line around the headwaters of the Tellico River to ascertain whether there were any marked trees on that line?

A. Why no, I took the sworn evidence which had been given in other cases and the testimony of Mr. Burns and Mr. Fain, and from the plat of 1821 I could see—using that plat as a guide—that the line could not possibly diverge in that direction.

Q. You were to go and form an independent judgment from your own personal examination, were you not?

A. Well I found there the trees—I certainly found trees which were marked similar to those I had just previously found along the undisputed line and that certainly governed me in following down the Jenks' ridge and up state ridge. Those trees were marked, as I say, and had the same general appearance as trees which I
771 had seen only a few days before on the undisputed line between Jenks' Knob and the 101st mile post.

Q. But you did not go around that line—around the headwaters of the Tellico River to ascertain whether you could find any marked trees around that line, did you?

A. No sir.

Q. Now you claim to have found a tree between the mouth of Slick Rock and where the fore-and-aft tree stands on the north bank of the Tennessee River?

A. Yes sir.

Q. Which is marked No. 30 on yours and Burns' map which Mr. Burns and others had theretofore never discovered, did you not?

A. Yes sir.

Q. Do you think it is possible that you might have found such trees by going around the head waters of the Tellico River?

A. It is possible I might have if there are such trees there.

Q. You did not make any such examination, did you?

A. Not at that particular place.

Q. How long were you down in that country making your examination?

A. About six weeks all together, I think.

Q. Now, Mr. Gannett, council appearing for North Carolina have examined you with regard to some supposed field notes, and given you various courses and distances supposed to be called for in some field notes, and you were asked about a call which was supposed to run from an 85th mile tree south 60, west, 320 poles, holly tree 86 miles near the head of the middle fork of Tellico river, and being a question in regard to that call you stated that it conformed to the North Carolina contention, did you not?

A. That is I found a holly tree near the head waters of the Tellico River.

Q. Now what do you call near?

A. Well, it is near as described in these supposed notes.

Q. What supposed notes?

A. That were read by Mr. Matthews, that after crossing the Tellico River they marked this holly tree and that agreed with the record as shown by notes that that holly tree was a few hundred feet
772 southeast of the fork of the Tellico River.

Q. Yes, but the notes do not call for crossing Tellico River as read to you by Mr. Matthews, do they?

A. I think they did.

Q. You think it said crossing Tellico River?

A. I think that Tellico River is mentioned in the notes.

Q. But it does not say crossing Tellico River, does it?

A. That can be confirmed by Mr. Matthews.

Q. You have it in mind then that it does say crossing Tellico River?

A. It mentions the Tellico River, as I remember.

Q. But did you not just awhile ago make a statement to indicate that you had it in your mind that it said crossing Tellico River?

A. Well the statement can be confirmed by the question as originally asked by Mr. Matthews.

Q. But I want to know if you do not carry it in your mind that that statement that he read to you, or that call that he read to you, recited crossing the Tellico River?

A. My remembrance is that it mentioned the Tellico River.

Q. But did you not just awhile ago state that it did say crossing the Tellico River?

A. Well, I do not remember the exact expression whether I used the word crossing or not.

Q. Now where you found that holly tree, which is claimed by North Carolina to be the 86 mile tree in going the last mile northeast of it, you did cross the Tellico River, did you not?

A. Immediately after leaving the 86 mile tree, yes sir; going northeast from the 86 mile tree I crossed a branch of the Tellico River.

Q. Then if the mileage be correct, between the 85th and 86th miles you would cross the Tellico River, according to the contention of North Carolina?

A. Yes sir.

Q. Now get Mr. Burns' map, complainant's exhibit D, and I will ask you to state if that "tree No. 107, 86 M." is the tree that
773 you referred to as the holly tree bearing the 86 mile mark?

A. Yes sir.

Q. I will ask you to state if that point as indicated on complainant's exhibit D, is not some four miles from the beginning of the head waters of Tellico River?

A. Well it is some distance from the extreme beginning but it is only a few hundred feet from where you cross Tellico River as shown on the plat.

Q. Quite true. Now I will ask you to state if there should be a holly tree up here on McDaniel Bald, or near Cold Spring Gap, as indicated on complainant's exhibit D., would not a holly tree so located be near the head of the middle fork of Tellico River?

A. Well it would be near the extreme head, yes sir. You see the expression "head of a river" is a very general term. It may cover a range of several miles.

Q. When you refer to the head you mean the top do you not?

A. Well, if you get it down to a fine point of course you refer to the extreme head, but that head would vary in different years according the amount of rain fall. For instance, one year it might be way up here and the next year a mile or two further down—if you are referring to the running water.

Q. But you do not know; you have never been on that ground?

A. I am speaking of any stream; I say that the head varies from year to year where the running water is.

Q. Now then leaving out of your mind for a moment the supposed courses and distances shown on this plat of 1821 around the head waters of Tellico River, it does show that the 86 mile circle is near to and some little distance to the east of the head waters of the middle fork of the Tellico as indicated on this map, does it not?

A. It does on that map; it shows that it is two miles and one half east, but the map is not correct—that is the drainage is not correct in that respect.

Q. You said it showed that it was two miles and a half to the east of the head waters of the middle fork?

774 A. Well, of a fork; I do not say the middle fork because there are only two main forks shown on this particular plat of 1821.

Q. Then let us take this eastern prong of the Tellico River as shown on this map, and according to the sketch of it how close does it rise to the state line?

A. According to that tracing in evidence it is something less than

half a mile, but as I say these streams are simply sketched in roughly. It is about a half a mile.

Q. Now take the other fork of the Tellico River heading up near to the state line as shown on the map of 1821, and heading to the west of the state line as shown on said map, and tell me how far the head of that prong is west of the state-line as shown by the scale of this map?

A. It is approximately a mile and one half.

Q. It is nothing like two miles and one half is it?

A. No sir, it is about a mile and a half, simply from the rough sketching of the stream.

Q. Then you were very much mistaken a while ago in saying that the map showed that the Tellico River headed two miles and a half west of the state line, were you not?

A. When did I say it headed two miles and one half? According to which map?

Q. This map of 1821?

A. Do you mean a few minutes ago?

Q. Yes.

A. I did not measure it at that time. This time I used a scale.

Q. Now, Mr. Gannett, please refer to your notes of your survey east of that holly tree which you found down there south of the Tellico River and give us the course and distance running that mile, northeast of the holly tree and across the Tellico River?

A. North 35 degrees, 38 minutes east, 282 feet; north 48 degrees, 57 minutes, east 132 feet; north 36 degrees and 1 minute east, 202 feet; north 30 degrees, 26 minutes, east 121 feet; north 43 de-
775 grees, 55 minutes east 82 feet; north 36 degrees, 55 minutes, east 108 feet; north 50 degrees, 53 minutes east, 138 feet; north 72 degrees, 21 minutes, east, 233 feet; north 51 degrees, 40 minutes, east, 378 feet; north 69 degrees, 46 minutes, east, 156 feet; north 79 degrees 47 minutes, east, 411 feet; north 58 degrees 1 minute, east, 80 feet; north 58 degrees, 1 minute east, 535 feet; north 79 degrees, 10 minutes, east 502 feet; south 81 degrees 26 minutes, east, 303 feet; north 56 degrees, 10 minutes east, 470 feet; south 63 degrees, 43 minutes east, 132 feet. I think you will find that is approximately a mile.

Q. You had two or three courses in there due north, did you not?

A. No; I did not have any due north; they were all northeast or southeast. The general course is northeastward.

Q. You had some courses in there southeast did you not?

A. There are two southeastward, nearly east, as I remember.

Q. This call was given to you by Mr. Matthews leading to a holly tree; that was south 60, west?

A. That is a general course southwest.

Q. A straight line 320 poles?

A. That is they took one straight shot apparently across the valley. I made a detail, or ran a detailed transit line down the ridge and to the crossing of the creek or river.

Q. What is the reverse of that course, south 60, west?

A. It would be north 60, east.

Q. Now in your re-direct examination by Mr. Matthews I believe you stated in substance that you could not tell what the main ridge of the mountain was until you got to junction?

A. The junction is certainly on the main ridge. The others are leading—big leading ridges. As I say there could be a difference of opinion about what is the leading or main ridge, or better, you might say there is no real main ridge until you get to the junction.

Q. Did you not testify in your original examination that the ridge leading from Fodder Stack to junction was the main ridge?

A. Well it is one main ridge.

776 Q. Did you not testify that it was the main ridge?

A. Well, I do not remember about that.

Q. Now put it differently: did you not testify that it was the leading ridge?

A. Well it is, as I so explained, the mass of the ridge; according to the mass of the ridge I should say it is the leading ridge, that is it spreads out; the base of it would be thicker, there would be more weight of it in the mass or ridge as a whole. That is on account of these other ridges which make out to the west especially.

Q. To reach that conclusion now you have got to take into consideration all of Little Fodder Stack ridge to the north of Big Fodder Stack, and then the ridge that runs down from Big Fodder Stack westerly, called Pine Mountain, have you not?

A. Well I have to consider the various branches or forks of that big ridge.

Q. Did you not state in your cross examination yesterday that there was no doubt about the ridge from Hangover to Junction being the main ridge?

A. That is over Stratton Bald; that is certainly the main or big leading ridge.

Q. Did you have a conference with council for North Carolina and Mr. Burns the expert, of North Carolina last night.

A. I paid them a social call.

Q. Did they tell you about this call that they have been reading to you?

A. No sir—well, that is, I knew about these calls before hand, before that.

Q. Oh, you did?

A. Oh yes sir.

Q. Where did you get your information?

A. I had a copy, a typewritten copy of what is said to be, or certified to be, a typewritten copy of the original notes.

Q. Who certified it?

A. It is certified on the copy.

777 Q. Who made the certificate? Can you not tell us who made the certificate, Mr. Gannett?

A. Well I do not know from my personal knowledge who made the certificate.

Q. You said it was a certified copy. I would like to know who officially certified it?

A. Well I can read you the title.

Q. I am not asking you about the title. I want to know who certified to a copy of some field notes which you say you have in your possession and which you say is certified to?

A. Well, strike out the word certified to then.

Q. Then you are mistaken about its being a certified copy?

A. Well it says, "the foregoing is a true complete and exact copy of the book of field notes made by——"

Mr. CATES: I object to the witness reading from a paper which he has, and which I have not called for.

A. It is according to what you consider as certified.

Q. It is not certified to by any official?

A. Not by any state official no sir.

Q. Or by any individual, is it?

A. I do not see any individual name signed to it.

Q. Then you are mistaken about its being a certified copy, are you not, Mr. Gannett?

A. Possibly I am. I do not know what you would consider or how you use the word "certified."

Q. Where did you get that paper that you have in your hand and which you say is a copy of some notes of some kind.

A. I got it several days ago.

Q. From whom?

A. It was sent to me from Asheville, North Carolina.

Q. By whom?

A. By Mr. Burns.

Q. You had them in your possession on yesterday and this morning when I was cross examining you.

778 A. Yes sir.

Q. You made no reference to them at all?

A. No question was asked about them.

Q. You made no reference to them?

A. No sir.

Q. Now one of these calls read to you by Mr. Matthews ended as follows: South 10, east, 160 poles "beach, 75 miles, main mountain"?

A. Yes sir.

Q. And that you say lands you at the Junction?

A. Yes sir.

Q. It was from that that you received the suggestion that it was proper to call the Junction the main mountain, was it not?

A. I have seen an old beech at the Junction lying on the ground which appeared to be an original land mark.

Q. Did you ever tell about that before?

A. It is noted on this plat, I think, I know I have seen it at the Junction.

Q. Did you ever testify to that before?

A. Not specifically excepting as I say—yes sir, it is marked as tree 83 on this plat exhibit D.

Q. Yes, but you did not testify about seeing it lying on the ground, did you?

A. I say no particular questions were asked about it, but it is part of the evidence as shown on this plat. It is a very old tree and has now fallen down.

Q. Why did you not testify about that particularly when you were giving your original testimony?

A. Because no questions were asked about it at all.

Q. Did you find that out from Burns?

A. Of course there were other surveyors who found it before I got there. I was only there last spring and it has been used as a land mark, and I think as a land corner, also, for many years.

Q. And it is so marked, is it?

779 A. I say it has now fallen down.

Q. It is so marked as a land corner, is it not?

A. My understanding is that it has been used for both state line mark and land mark.

Q. Where did you get that understanding?

A. From the record I have read.

Q. What record?

A. The record in a suit, I think of Belding vs. Hebard. I cannot specify at this minute the name of the suit but I know I have had that, or seen that referred to in other cases.

Q. And you just took that to be that particular beech tree that was mentioned in this call given you by Mr. Matthews?

A. Well that tree is at the Junction; I know that.

Q. You mean such a tree is at the junction?

A. There is an old beech tree at the junction.

Q. Right on top of the ridge?

A. Well the junction is practically on top of the ridge; it is not way up on the summit of Stratton Bald but it is at the southwest end of the summit of Stratton Bald.

Q. You do not know about the Strattons entering some land in there to the east in North Carolina, do you?

A. No sir.

Q. But that tree does bear corner marks?

A. As I say there is such an old beech tree there and is now lying on the ground and beginning to rot.

Q. When counsel for Tennessee was cross examining you yesterday about that line running up Slick Rock Creek he was directing your attention, and referring specifically to the line as run on complainant's exhibit D, the map of yourself and Mr. Burns, was *it* not?

A. I think so.

Q. And we were estimating the distances between the supposed third and fourth mile away from the mouth of the river according to that map, were we not?

780 A. Yes, sir, the approximate distance.

Q. You were asked about the course in some supposed field notes which were read to you by Mr. Matthews, which referred to the 69th mile, "on east bank of said creek and at end of 70th

mile a birch on west bank of said creek" and you stated that you would consider that that still called for Slick Rock Creek, did you not?

A. Yes sir.

Q. But that kind of a call would not at all fit in with this stream marked a creek, as shown on this plot of 1821, would it?

A. No sir, that stream is simply sketched in there.

Q. I know, that is what you say about it, Mr. Gannett, but do you conceive it possible that with the surveyor's notes before the man preparing this plot calling for the 69th mile tree, or the end of the 69th mile, to be on the east bank of the creek, supposing that creek to be Slick Rock Creek—that he would have drawn this map as he did showing the 69th mile circle some two miles to the west of the creek?

A. I say he certainly should have shown it nearer the creek or the creek nearer the line.

Q. And he would have shown that 69th mile circle on the east bank of that creek, would he not, if he had been drawing the map from those calls?

A. If he had been making an exact drawing, yes sir.

Q. Then if the 69th mile circle on this map of 1821 be correctly located on that map, it is impossible for that stream that is marked a creek to be Slick Rock Creek, is it not?

A. It might be an eastern prong of Slick Rock Creek.

Q. But, Mr. Gannett, the call is for a tree on the east bank of the creek, while the 69th mile circle is some three miles to the west of the stream marked a creek. Now if the map be correct in the location of the line, it is impossible for that stream marked a creek to be Slick Rock Creek, is it not?

A. Well, as I say, it might be some prong of Slick Rock Creek.

Q. What possible prong of Slick Rock Creek could be three miles to the east of Slick Rock Creek if the 69th mile tree is on the east bank of the creek?

781 A. Well the prong probably does not have any name to it, but as I say the creek branches out as you go up it; there are several prongs to it as you go up the creek.

Q. According to that call given you by Mr. Matthews the end of the 70th mile is at a birch on the west bank of said creek. How far to the west of that stream marked a creek is the 70th mile circle on this map of 1821?

A. It is nearly four miles, according to that.

Q. The 70th mile circle is nearly four miles west of this stream marked a creek on this map, is it not?

A. According to that plat, yes sir.

Q. According to this plot?

A. Yes sir.

Q. Now if that 70th mile circle should happen to be up on Haggover ridge, five miles southwest of the river it would be just about four miles from the nearest point of Cheoah River, would it not?

A. I think that is the way it approximates the sketch on the other map, not this map.

Q. You say on this map that Cheoah River is not laid down at

all. I am not talking about what this map shows but if the 70th mile ends on the Hang-over ridge according to the Tennessee contention it is at that point just about four miles west of the nearest point of Cheoah River as it actually lays on the ground, is it not"

A. It approximates that statement.

Without concluding the examination of the witness Gannett at 12:50 o'clock P. M. a recess was taken until 2:00 o'clock P. M.

782 AFTER RECESS.

2 P. M.

S. S. GANNETT resumed the stand for further re-cross examination.

By Mr. CATES:

Q. Now, Mr. Gannett, Mr. Matthews asked you about some call which he read to you, purporting to be from the 64th mile to the 65th mile, as follows: "South 75 west, 320 poles."

A. Yes sir.

Q. That is a straight line, isn't it?

A. Yes, that would be a straight line.

Q. That would indicate a straight line 320 poles long, would it not?

A. Yes, that they could see.

Q. Would it not indicate a line straight, same course, 320 poles in length?

A. Yes sir. One call, one course, according to that call.

Q. In connection with that supposed call, you were asked about the call between mile circles which crosses the Tennessee River; that appears to be a straight call there on the map of 1821 does it not?

A. Yes sir.

Q. Have you, with a proper instrument, taken the course of that call as laid down on the map of 1821?

A. With a compass I think I took the approximate bearing, sighting from a point on the ridge near pine tree 64, southwest.

Q. I am not asking you about what you did when you sighted from a ridge on the mountain, but I am asking you if you ever sighted to ascertain the course of this call which crosses the Tennessee River, as it is laid down on this map of 1821?

A. No, I have not personally. You mean verified it on this plat?

Q. Yes.

A. No, I have not verified it on this plat.

Q. Then you do not know what this course is as laid
783 down on this map where the line crosses the Tennessee River?

A. I have not verified it with a protractor.

Q. Precisely. That is what I want to know.

A. No.

Q. So you cannot tell us accurately what that call is, according to the course shown on this map?

A. I can test it right now, as close as I can according to the scale of the map or plat.

Q. Well, what is it?

A. According to the plat, it scales approximately south 70 west, with the protractor.

Q. That is, taking this line from the 101st mile circle to the Georgia line as due south?

A. Well, yes; that line is at right angles to the State line, what is called the southern boundary of the State of Tennessee on this plat. That is shown at right angles to that line, and we know as a matter of fact that that is very nearly a due east and west line.

Q. Which is a due east and west line?

A. The southern boundary of Tennessee.

Q. Do you not know that this line which is shown to be a due southern line, at the lower part of this map, is some 7 or 8 degrees off of south, as shown by the pointers, up here on the upper end of the map?

A. That could be verified, of course, only by carrying parallel lines from one end of the map to the other. In drawing the map they may have made an error of several degrees; that is, swung the map out, or the course on the map, several degrees in platting from one point to another, so that the course shown at the left hand of the map, as I say, may be a few or several degrees different from the course or true north shown at the right hand end of the map.

Q. Your map, Complainant's Exhibit D, does not show where the 64th mile tree is, does it?

A. The tree marked 25 is thought to be or supposed to be the 64th mile tree. That particular tree could not be exactly identi-
784 fied; but tree No. 25 is thought to be the 64th mile post.

Q. There is nothing on tree No. 25 to indicate that it was the 64th mile tree, is there?

A. No sir; the figures "64" could not be read or seen. As you know, only a comparatively small number of those old mile trees could be identified by the numbers themselves; the numbers in this length of time have been obliterated.

Q. Now, take a course from this 25th mile tree, as shown on your map, Complainant's Exhibit D, to the mouth of Slick Rock Creek, and I will ask you to state if it is not nearly due west.

A. Yes sir, it is nearly due west, according to that plat.

Q. And by this plat you mean yours and Burns' map, Complainant's Exhibit D?

A. Yes sir.

Q. Now, how far do you say that tree 25 is from the river, by actual measurement?

A. From the river itself, it would be a little over 1550 feet; between 1550 and 1600 feet.

Q. That is not quite one-third of a mile, is it?

A. No sir; between a quarter and a third of a mile.

Q. That number of feet could have been easily indicated on this map of 1821, even by the scale of that map?

A. It would show on that scale, yes sir.

Q. And if there had been a turn down the river and to the nort
west at the end of 1600 feet from the 64th mile tree, it could easi
have been noted on that map by one of those black dots, could
not?

A. It could have been shown, yes sir.

Q. The scale of the map would have permitted that to have bee
done, would it not?

A. Yes sir. But that is similar to practically all cases that
know, that between successive mile marks, as shown on the plat
1821, there are a number of turns or angles in the summit of t
mountain or along the ridges, and they are not shown on this pl
of 1821.

785 Q. Well, Mr. Gannett, running from this 25th mile tr
which you say is the 64th mile——

A. I will say that that tree is not absolutely identified as the 64
mile.

Q. Assuming it to be the 64th mile, as you have assumed it to
—running thence to the river on the line that you found mark
and ending at the river on the fore and aft marked hemlock tr
then the next course run by you and Burns down the river w
practically at right angles with that line which reached the riv
was it not?

A. Yes sir.

Q. Then yours and Burns' map, Complainant's Exhibit D, ru
ning the line which crossed the river at the mouth of Slick Ro
Creek, as laid down in your map, does not conform at all to a straig
line?

A. No; it follows the topography of the country; that is, dow
the ridge and then down a little creek, and then down the bank
the river.

Q. Now, you were asked about ridges leading off from Big Fodd
Stack north and west. I will ask you to state if your topographic
map does not show that Little Fodder Stack is nearly due north
Big Fodder Stack?

A. Well, it is a few degrees east of north.

Q. Then, from Little Fodder Stack the main ridge would seem
lead down what is called, on your topographical map, Salt Spring
Mountain?

A. Well, there is a big leading ridge off to the westward.

Q. Then another ridge leads down from Little Fodder Sta
almost due north to the Tennessee River about Tellassee Creek, do
it not?

A. Yes sir.

Q. Now, Counsel for North Carolina asked you about some ridg
and spurs leading from Hao and Hangover eastwardly toward t
Cheoah River, and you gave the elevations of two such ridges
spurs. Now between the last ridge which you described by givi
the elevation and the Hangover ridge along which Tennessee co
tends the State line to run there is still another ridge which lea
down from the Hangover ridge to the Cheoah River at its mouth
that is, where it runs into the Tennessee River, is there not?

—. ——.

786 Q. And that ridge or spur runs down from the main Hangover ridge where the Hangover ridge has an elevation of something like 3,000 feet, does it not?

A. 3,500 feet.

Q. Well, that is better. Now, between that ridge, which springs from Hangover where it has an elevation of 3,500 feet and runs down to the mouth of Cheoah River, is the Yellowhammer Creek?

A. Yes, as shown on this map.

Q. Which Creek lies between the ridge we have just been talking about and the main Hangover Ridge along which Tennessee contends the State line to run, does it not?

A. That is, as shown on this map.

Q. As shown on this Nantahala sheet of the United States Geological Survey map, that is correct, is it not?

A. Yes sir.

Q. Now, you were asked about some ridges which debouched from the State line north of the river at an undisputed point, and which you say run to the Tennessee River considerably above the mouth of the Cheoah River. According to this government — there is still a ridge south and west of that running down from the main ridge along which the undisputed boundary line runs and reaches the Tennessee River just below the mouth of Cheoah River does it not?

A. Yes, there is one branch of the Smoky Mountain.

Q. And that particular ridge which reaches the Tennessee River on the north side just about opposite the mouth of the Cheoah River is also opposite that ridge or spur which leads from just below the mouth of the Cheoah River up to the Hangover Ridge or divide where it has an altitude of 3,500 feet?

A. Yes sir.

Q. Now, Mr. Gannett, you have assumed all the while that the end of the 64th mile is just about 1,500 or 1,600 feet north of the Tennessee River, have you not?

A. It is somewhere in that neighborhood; in a general way that is correct.

787 Q. Suppose the end of the 65th mile were just that number of feet north of the Tennessee River—that would make considerable difference in your estimates, would it not?

A. If the 65th mile were there?

Q. Yes.

A. Yes sir.

Q. And if such were the fact, it would practically comply with the call of the report: "Crossing Tennessee River at the distance of 65 miles", would it not?

A. In a general way it would, yes sir.

Q. Did you ever count the mile circles from the beginning down to the river?

A. I think I have, yes sir.

Q. Now this Hangover Ridge or lead along which Tennessee contends the State line runs, from the river up to Hangover Peak is the divide of the waters between Slick Rock and Bears Creek, is it not?

A. Yes. You had better include Yellowhammer Creek also.

Q. It is also the divide between Slick Rock and Yellowhamm Creek, is it not?

A. Yes sir.

Q. Give me the altitude of this spur or ridge which runs from Hangover lead, where the Hangover lead has an altitude of 3, feet, down to the mouth of Cheoah River. What is the elevation that ridge a half mile above the mouth of Cheoah River?

A. It is between 500 and 600 feet.

Q. What is its elevation a mile from the mouth of Cheoah Riv

A. It is about 800 feet above the mouth of the river.

Q. Now at the end of a mile and a half from the river wha the elevation of that ridge?

A. It is about 1,200 feet.

Q. Above the river?

A. Above the river.

Q. At the end of two miles what is the elevation?

788 A. It is about 1,600 or 1,700 feet above the river.

Q. How far is it from the mouth of Cheoah River to t point on the Hangover Ridge having an elevation of 3,500 feet, f which this ridge or spur runs down to the river?

A. It is very close to three miles.

Q. Now give me the elevation at the end of 2½ miles from mouth of Cheoah River?

A. I would say between 1,400 and 1,500 feet higher than river.

Q. What is the elevation of that point on Hangover ridge wh you say has an elevation of 3,500 feet above sea level above the riv

A. It is 2,250 feet; better say between 2,200 and 2,300 above river.

Q. What is the scale of this topographical map?

A. It is on the scale of two miles to one inch.

Q. Now point out for me where that place is that you say has elevation of 3,500 feet above sea level?

A. Here (indicating on the map).

Q. Well, a straight line from that point on Hangover, which an elevation of 3,500 feet to the mouth of Cheoah River is ju fraction over two miles, is it not?

A. No; it is very close to 2¾ miles by the scale.

Q. What point is it on this topographical map which you say an elevation of 3,500 feet that has a name?

A. It is generally called Cold Spring Knob.

Q. What is the distance from Cold Spring Knob northeasterl the river to a point where the Tennessee contention claims the crosses it according to this map of yours and Burns, Complaina Exhibit D?

A. Well, it is a little over three miles.

Q. And Cold Spring Knob is indicated on this map, Compl ant's Exhibit D, is it not?

A. Yes sir.

Q. Now, Mr. Gannett, I again call your attention to the Ces Act, that is the act ceding the territory which is now Tennesse

the General Government, and ask you if it does not call for
789 the extreme height of the Smoky Mountain after you pass over the great Iron or Smoky Mountain?

A. (Reading:) Thence along the extreme height of said mountain to the place where it is called the Unicoy or Unaka Mountain."

Q. It does not say anything about following the average height of the mountain, does it?

A. No sir. I say it is entirely too brief; it is not explicit.

Q. Now, how much higher is the mouth of Cheoah River than Slick Rock Creek, according to this government map?

A. Well, the contour interval shown on here is 100 feet; that is, the mouth of Slick Rock Creek and the mouth of Cheoah come within that interval; that is, it apparently would be about 50 feet. It is certainly less than 100 feet, and according to the scale on the map, as I say, it would be approximately 50 feet.

Q. How far is it, according to this Complainant's Exhibit D, from the mouth of Cheoah River to the mouth of Slick Rock?

A. It is a little less than two miles.

Q. Take this angle in the line north of the river, made on Com-Plainant's Exhibit D, where tree No. 10 appears, and what is the course to the mouth of Cheoah River?

A. It is about south 36 degrees west.

Q. And from the mouth of Cheoah River to Cold Spring Knob what is the course, as shown on Complainant's Exhibit D?

A. South 47 degrees west.

Mr. MATTHEWS: That is from where, General, to Cold Spring Knob?

Mr. CATES: From the mouth of Cheoah River to Cold Spring Knob.

(By Mr. CATES:)

Q. What do you say the elevation of Little Fodder Stack is?

A. It is given as 3,687 feet above sea level on the Murphy sheet.

Q. How far west of Slick Rock Creek is Little Fodder Stack?

A. It is between two and three miles west; of course, depending upon the points on the Creek which you start from.

Q. That is according to the topographical map?

790 A. Yes sir.

Q. According to Burns map how far is it from a point on Slick Rock Creek directly east?

A. Well, it is exactly the same; that is, it is between two and three miles, the distance I just gave.

Q. Now, give me the elevation of Hangover Ridge from Cold Spring Knob at intervals of half a mile around to Junction, as shown on this Nantahala quadrangle sheet?

A. At Cold Spring Knob the elevation is 3,500 feet above the sea level; at a point one-half mile southward from Cold Spring Knob the elevation is the same, 3,500 feet; at a point one mile southward the elevation is 3,800 feet; at a point one mile and a half southward the elevation is 4,000 feet above sea level; at a

point two miles southward from Cold Spring Knob the elevation is approximately 4,700 feet.

Q. Now then is Hangover within the next half mile?

A. Yes sir.

Q. What is the elevation of Hangover?

A. It is 5,100 feet.

Q. Then a half mile from Hangover southwesterly?

A. Well, the elevation is practically the same, 5,100 feet.

Q. Then at the end of a mile from Hangover do you strike Hao?

A. You go over Hao within that half mile.

Q. What is the elevation of Hao?

A. 5,200 feet, plus.

Q. What is the elevation a half mile southwesterly from Hao?

A. Well, it is very close to 5,000 feet above sea level.

Q. Then at the end of another half mile?

A. The elevation is practically the same; it is up on a big nearly level ridge.

Q. Then at the end of another half mile?

A. It rises about 200 feet; that it, it is 5,200 feet above sea level—that is, a mile and a half from Hao.

791 Q. Then will another half mile take you to Stratton Bald?

A. Yes sir.

Q. What is its elevation?

A. Approximately 5,400 feet.

Q. Then a half mile from Stratton Bald toward Junction what is the elevation according to this government map?

A. Well, it is a little less than 5,000 feet at the junction.

Q. About 4,900 feet at the junction?

A. I would say between 4,900 and 5,000 feet at the junction.

Q. Now go down the Big Fodder Stack Ridge from junction according to the North Carolina contention, what is the elevation a half mile from the junction point, northwesterly?

A. It is 4,500 feet.

Q. What is it one mile from junction northwesterly on the Fodder Stack lead on the North Carolina contention?

A. It is between 4,400 and 4,500 feet.

Q. Now a mile and a half from junction northwesterly on Fodder Stack lead, the North Carolina contention?

A. It is about 4,200 feet.

Q. At the end of two miles from junction northwesterly on Fodder Stack lead, the North Carolina contention?

A. 4,300 feet.

Q. At the end of 2½ miles on that same lead or ridge?

A. 3,900 feet, approximately.

Q. At the end of three miles from junction along the Fodder Stack Ridge or lead?

A. Very close to 4,300 feet.

Q. That is Big Fodder Stack?

A. Yes, that is Big Fodder Stack.

Q. Now, the way you and Mr. Burns have laid down this line, running up a spur from Slick Rock Creek to Big Fodder Stack

Ridge, you did not reach the Big Fodder Stack Peak, did you?

A. Not the peak proper, no sir. We came within a dis-
792 tance of a thousand feet of it.

Q. Don't you know it was about 1,600 or 1,700 feet?

A. Well, I think I actually measured it out. (After measuring the map). According to the scale, it is 1,200 feet.

Q. Practically a quarter of a mile?

A. Yes; but the point where the turn is made, however, is on a very big shoulder of the main summit. In a general way you could call it the summit of Fodder Stack. Of course, it is not absolutely on the highest peak but almost as high.

Q. You talked about some big ridges or spurs running down from Big Fodder Stack; did you run down one of them which is called Pine Mountain, to the west of Big Fodder Stack?

A. No sir; I did not survey the line down there. I went over the summit of Big Fodder Stack.

Q. But you did not go down on Pine Mountain?

A. No sir; I went off to the northeastward.

Q. Just for a moment. You said Big Fodder Stack had an elevation of what?

A. 4,300 feet, approximately. By the contouring it is over 4,300 feet.

Q. 4,300 feet plus?

A. Yes sir.

Q. Now, take a mile out that ridge leading to Little Fodder Stack and tell me what the elevation is?

A. One mile northeastward from Big Fodder Stack the elevation is in a gap about 3,400 feet above sea level.

Q. Now then two miles from Big Fodder Stack toward Little Fodder Stack what is the elevation?

A. 3,500 feet, approximately.

Q. What did you say it was at Little Fodder Stack?

A. It is 3,687 feet.

793 Redirect examination.

By Mr. Matthews:

Q. Mr. Gannett, do you know the Yellowhammer Creek?

A. Why, I do not think I have been along that Creek, no sir.

Q. Well, does that government topographical map show that Yellowhammer creek runs into the Tennessee River?

A. Yes sir.

Q. Does it, in fact, run into Tennessee River?

A. Well, I have been told that the mouth is a little out of place; that it actually runs into the Cheoah River near its mouth, and it was shown on this Exhibit D as running into the Cheoah River near its mouth. In that respect I would say the topographical map is in error.

Q. Do you know that it is in error, or not?

A. No sir, I could not swear positively, because I have not been at the mouth of the Yellowhammer Creek.

525

Q. Well, whereabouts does it run into the Tennessee, according to that topographical government map, with reference to the Cheoah River?

A. Just below the mouth; that is within less than a half mile of the mouth of it, or about a third of a mile, according to the government map.

Q. That would be between the Cheoah River and Slick Rock Creek?

A. Yes sir.

Q. When you were north of the Tennessee river and looking down in that direction could you tell whether there was any creek running in there or not?

A. I was not looking particularly for that creek, so I did not notice particularly.

Q. Well, if it does run into the Cheoah River, then your evidence about the pertinency of the Yellowhammer Creek would be nil would it not?

A. I say in that respect this map is in error, I know, regarding the Yellowhammer Creek.

Q. You know that, you say?

A. No, I won't say that I know from being at the mouth of the Yellowhammer Creek, because I have not been at the mouth of Yellowhammer Creek.

794 - Q. Have you not been any place in that locality where you could tell, to your best knowledge, as to whether the Yellowhammer Creek does run into the Tennessee or not?

A. No; I cannot say that I am competent today to give absolute evidence on that point, because I did not know Yellowhammer Creek by name when I was there.

Q. Did you see any Creek running into the Tennessee between the Hangover Ridge and Cheoah River?

A. Well, I did not notice it. I was not looking for it particularly.

Q. Now, you said something about the fact that if the 65th mile circle does come out north of the river, that it would change the calculations in some respects—in what respects do you refer to when you gave that answer?

A. Of course, it would change the calculations regarding the miles southwestward.

Q. Well, in any other respect?

A. That is, it would throw the distances out.

Q. Would it have any effect upon your testimony as to where the State line crossed the Tennessee River?

A. No sir; it would not affect that because that is determined by the actually marked trees on the ground.

Q. Did you ever see the original of this map of 1821?

A. No sir, I have not.

Q. Did you ever see a photograph of it before it was handed to you at this hearing?

A. I think the only copies I have seen were a blueprint and a

tracing. I do not think that I have seen this particular photograph or a similar photograph before this hearing.

Q. What do these things here look like (indicating); what do they convey to you?

A. They show where the map has been broken apart and then joined together.

Q. Or made apart and then joined together—is that the idea?

A. Well, yes. They were evidently separated. The original map was——

795 Q. Can you say——

Mr. CATES: Let him finish. He started to say that the original map was something.

The WITNESS: The original map was evidently separated and spread on pieces of paper; that is, I judge so from the photograph.

Q. Can you say whether that was done after it was made, or whether it was made in three pieces and pieced together originally?

A. Besides being made in separate pieces and pasted together, I should say it had also been broken along the line where it was folded, or the lines where it was folded.

Q. That then would probably account for this linen that has been pasted on there, would it not?

A. The linen would hold it together.

Q. I want to direct your attention to this point—do you see two points there very close together (indicating on the map)?

A. Yes sir; apparently two mile circles.

Q. What is your opinion about what those two represent?

A. It is evidently at the point of juncture between two portions of the map; that is, one mile circle is right close to the edge on one sheet, and then the corresponding mile circle is on the edge of the adjoining sheet.

Q. Is it your opinion that they were intended to represent the same mile circle?

A. Yes sir. They certainly could not represent two different mile circles; they are not far enough apart.

Q. And you said you have counted up the mile circles on the map? How did you treat those two?

A. I called those one.

Q. Just a few calculations and then I am through. You commenced on what has been called the Tennessee contention at a point called Cold Spring Knob where it is about 3,500 feet above sea level?

A. Yes sir.

Q. And you said that that was about how far from the Tennessee river?

A. That was about three miles.

796 Q. That was my recollection of it.

A. That is about three miles from the Tennessee River.

Q. Yesterday or this morning—yesterday I think—you gave calculations from the Tennessee River up to Cold Spring at intervals of a mile?

A. Yes, what is called the Hangover Ridge.

Q. I wish you would take the intervals of half a mile.

A. Up the Hangover lead?

Q. Just up to Cold Spring Knob.

A. Up the Hangover lead to Cold Spring Knob?

Q. Yes.

A. At a half mile from the river the ridge is approximately 600 feet higher than the river.

Q. Now a mile and a half?

A. Well, in a mile and a half it is practically the same; that is, about 600 feet above the river.

Q. Now 2½ miles?

A. It is about 1,500 feet above the river.

Q. Then the next half mile brings you to that Cold Spring Knob?

A. Yes sir.

Q. Has anything occurred to you up to this moment, either in your investigations or in your questioning, that has left any doubt in your mind as to where the State line runs in that region?

A. No sir; not from the evidence that I have found on the ground, and that is what I go by principally. Regarding even the maps, I judge from the evidence on the ground that the line did go up Slick Rock Creek and thence up on the Big Fodder Stack; that is the line that was actually marked on the ground.

Q. Now as to the courses and distances, what, if any aid did they give you?

A. This plat of 1821, in a general way, confirms that view.

Q. You are still of that view, are you?

A. Yes sir.

797 Recross-examination.

By Mr. CATES:

Q. Now, you were asked about this Yellowhammer Creek, which is shown on this government map to run into the Tennessee River about a third of a mile below the mouth of Cheoah, and you said that you had heard it did not run in there. Whom did you hear that from?

A. I made that statement from the fact that it is shown on this Exhibit D as flowing into the Cheoah River.

Q. When you were being asked about that, Mr. Burns got up and pointed out to you Yellowhammer Creek on this Complainant's Exhibit D did he not?

A. I believe he did.

Q. Is there not also another creek shown even on Burns' map between the mouth of Cheoah River and the Hangover Ridge along which Tennessee contends the State line runs?

A. There is a small Creek less than a mile long, and I do not doubt but what there may be still smaller creeks in that country which do not appear on a map of this scale.

S. S. GANNETT.

Subscribed and sworn to before me this 20th day of January, 1911.

[SEAL.] FREDERICK S. TYLER,
Notary Public, D. C.

Thereupon at 3:15 P. M. an adjournment was had to the Map Division of the Congressional Library for further examination of witnesses on behalf of the defendant.

798 EXHIBIT Y.

North Carolina–Tennessee.

Courses and Distances Southwestward Along State Line from Turnpike Crossing Smoky Mountain, to Little Tennessee River, up Slick Rock Creek, to Big Fodderstack and Junction. Notes by D. B. Burns, 1908.

799

Station.	True course.	Distance. (Feet.)
0 — 3 plus 80.2 ft.	S 73° 30′ W	380.2
3 plus 80.2— 5 " 5.6	S 60° 44′ W	125.4
5 " 5.6— 18 " 10.0	S 52° 18′ W	1,304.4
6 chestnut tree 24 inches in diameter; blaze and two hacks, fore and aft tree; 2 feet to left of station 6.		
18 plus 10.0— 23 plus 00.00	N 72° 19′ W	490.
19 " 20.0; white oak 24 inches in diameter, 2 feet to left of station 19 plus 20; fore and aft tree.		
20 plus 57.0; black oak 30 inches in diameter; 3 feet to left of station 20 plus 57.; 3 hacks on right side; side line.		
22 plus 00.0; white oak 18 inches in diameter; side line; 3 feet to right of station 22.		
23 plus 00.0— 27 plus 50.0	S 57° 34′ W	450.
26 plus 19.0; white oak 12 inches in diameter; 2 feet to left of station 26 plus 19; side line.		
27 plus 50.0— 31 plus 15.0	N 63° 18′ W	365.
31 " 15.0— 38 " 60.0	N 72° 23′ W	745.
32 " 5.0; black oak, 30 inches in diameter, 15 feet to left of station 32 plus 5; side line.		

Station.	True course.	Distance. (Feet.)
38 plus 60.0— 43 plus 99.7	S 83 42 W	539.7
43 " 99.7— 45 " 98.4	S 34 26 W	198.7
45 " 98.4— 51 " 30.0	S 82 52 W	531.6
51 " 30.0— 55 " 00.0	S 54 14 W	370.
55 " 00.0— 60 " 50.0	N 75 18 W	550.
60 " 50.0— 66 " 00.0	S 76 16 W	550.
66 " 00.0— 68 " 00.0	S 69 28 W	200.
68 " 00.0— 72 " 00.0	S 85 32 W	400.
68 " 95.0; chestnut 36 inches in diameter; 29 feet to left of station 68 plus 95.0; fore and aft.		
72 plus 00.0— 78 " 70.0	S 71 35 W	670.
78 " 70.0— 83 " 70.0	S 66 21′ W	500.
82 " 14.0; hickory 18 inches in diameter; 9 feet to left of station 82 plus 14; blaze on fore side and 3 hacks on left side (said to be 63d mile tree).		
83 plus 70.0— 85 plus 70.0	S 10 59 W	200.
85 " 70.0— 87 " 20.0	S 63 07 W	150.
87 " 20.0— 91 " 70.0	S 27 44′ W	450.
91 " 70.0— 97 " 50.0	S 51 52 W	580.
96 " 00.0; black oak 24 inches in diameter; 24 feet to left of station 96; fore and aft.		
97 plus 50.0—100 plus 10.0	S 56 03 W	260.
100 " 10.0—104 " 00.0	S 45 14 W	390.
104 " 00.0—105 " 50.0	S 65 48 W	150.
105 " 50.0—107 " 70.0	S 26 22′ W	220.
107 " 70.0—110 " 30.0	S 16 12 W	260.
110 " 30.0—114 " 20.0	S 52 44 W	390.
114 " 20.0—120 " 10.0	S 17 48 W	590.
120 " 10.0—123 " 90.0	N 73 48 W	380.
123 " 90.0—130 " 00.0	S 76 28 W	610.
124 " 42.0; hickory 12 inches in diameter; 3 feet left of station 124 plus 42; side line.		
124 plus 60.0; hickory 12 inches in diameter; 3 feet left of station 124 plus 60; side line.		
130 plus 00.0—134 plus 50.0	S 66 20 W	450.
134 plus 50.0—138 " 00.0	S 15 08 W	350.
138 " 00.0—144 " 80.0	S 59 34 W	680.

Station.	True course.	Distance. (Feet.)
140 " 00.0; spanish oak 24 inches in diameter; 34 feet to left of station 140; side line tree.		
140 plus 20.0; black oak 18 inches in diameter; 20 feet to left of station 140 plus 20; side line tree.		
140 plus 65.0; red oak 18 inches in diameter; 6 feet to left of station 140 plus 65; side line tree.		
800		
141 plus 80.0; white oak 12 inches in diameter; 5 feet to left of station 141 plus 80; fore and aft tree.		
141 plus 86.0; poplar 18 inches in diameter; 14 feet to left of station 141 plus 86; side line tree.		
144 plus 80.0—149 plus 50.0	N 67° 52′ W	470.
145 " 68.0; white oak 18 inches in diameter; 11 feet to left of station 145 plus 68; fore and aft tree.		
147 plus 10.0; hickory (dead top) 12 inches in diameter; 13 feet to right of station 147 plus 10; fore and aft tree.		
149 plus 50.0—157 plus 40.0	S 49 24 W	790.
157 " 25.0; hemlock 18 inches in diameter; 4 feet to right of station 157 plus 25; fore and aft tree.		
157 plus 40.0—158 plus 75.0	S 79 11 W	135.
158 " 75.0—161 " 60.0	N 38 28 W	285.
161 " 60.0—164 " 55.0	N 26 43 W	295.
164 " 55.0—168 " 40.0	N 22 18 W	385.
168 " 40.0—174 " 59.0	N 56 42 W	619.
174 " 59.0—178 " 20.0	N 78 56 W	361.
178 " 20.0—180 " 62.0	N 78 50 W	242.
180 " 62.0—184 " 34.2	S 85 11 W	372.2
184 " 34.2—187 " 10.7	S 76 30 W	276.5
187 " 10.7—190 " 39.4	S 48 51 W	328.7
190 " 39.4—193 " 25.0	S 16 28 W	285.6

Station.	True course.	Distance. (Feet.)
191 " 25.0; maple 18 inches in diameter; 10 feet to right of station 191 plus 25; Formerly blocked by Hayes and Bogle.		
193 plus 25.0—196 plus 90.0	S 11 07 W	365.
195 " 85.0; birch (down); side line pointed out by Hayes.		
196 plus 90.0—202 plus 71.0	S 10 31 E	581.
203 " 70.0; water birch 18 inches in diameter; 20 feet to left of station 203 plus 70; side line tree.		
204 plus 00.0; birch (dead top), 18 inches in diameter; 20 feet to left of station 204; side line tree.		
205 plus 23.0; double birch (on large rock); 25 feet to left of station 205 plus 23; side line tree.		
202 plus 71.0—206 plus 46.0	S 30 33 W	375.
206 " 46.0—211 " 76.0	S 61 37 W	530.
211 " 76.0—218 " 80.0	S 4 26 E	704.
218 " 42.0; poplar (dead top) 30 inches in diameter; 20 feet to right of station 218 plus 42; fore and aft tree.		
218 plus 80.0—222 plus 65.0	S 82 26 W	385.
221 " 30.0; beech 30 inches in diameter; 40 feet to left of station 221 plus 30; side line tree.		
222 plus 65.0—226 plus 24.0	N 73 06 W	359.
226 " 24.0—229 " 00.0	S 10 10′ W	276.
229 " 00.0—233 " 66.4	S 42 14 E	466.4
233 " 66.4—235 " 64.0	S 33 30 W	197.6
235 " 64.0—236 " 60.0	N 68 14 W	96.
236 " 60.0—245 " 30.0	N 73 28 W	870.
243 " 05.0; hemlock 24 inches in diameter; 34 feet to left of station 243 plus 05.0; side line tree.		
245 plus 30.0—249 plus 25.0	N 85 43 W	395.
249 " 25.0—255 " 21.0	N 87 28 W	596.
255 " 21.0—256 " 58.0	S 47 31 W	137.
256 " 58.0—261 " 02.0	S 15 02 W	444.
261 " 02.0—263 " 00.0	S 7 20 W	198.

Station.	True course.	Distance. (Feet.)
263 " 00.0—265 " 24.0	S 26 45 W	224.
265 " 24.0—267 " 77.0	S 85 22 W	253.
265 " 56.0; double hemlock 12 inches in diameter; 24 feet to left of station 265 plus 56; side line tree.		
267 " 77.0—277 plus 72.0	S 4 32 E	995.
277 " 72.0—283 " 70.0	S 2 21 W	598.
801		
283 plus 70.0—287 plus 10.0	S 25° 20′ E	340.
287 " 10.0—291 " 00.0	S 78 44 W	390.
291 " 00.0—292 " 23.0	N 62 12 W	123.
292 " 23.0—293 " 18.3	N 59 02 W	95.3
293 " 33.0; cucumber 12 inches in diameter, 12 feet to right of station 293 plus 23; fore and aft tree.		
293 plus 18.3—299 plus 79.5	S 57 00 W	661.2
299 " 79.5—309 " 40.4	N 58 02 W	960.9
309 " 40.4—312 " 42.6	S 82 12 W	302.2
312 " 42.6—319 " 54.0	S 19 34 W	711.4
319 " 54.0—323 " 17.0	S 30 56 W	363.
323 " 17.0—326 " 00.0	S 29 08 W	283.
326 " 00.0—330 " 00.0	S 30 52 W	400.
330 " 00.0—330 " 76.7	S 26 06 W	76.7
330 " 76.7—334 " 65.0	S 20 14 W	388.3
334 " 65.0—336 " 53.7	S 12 13 W	188.7
336 " 53.7—341 " 24.0	S 14 14 W	470.3
341 " 24.0—342 " 53.7	S 48 54 W	129.7
342 " 53.7—345 " 23.3	S 49 11 W	269.6
345 " 23.3—348 " 55.7	S 86 11 W	332.4
348 " 55.7—351 " 05.0	N 56 48 W	249.3
351 " 05.0—351 " 99.8	N 57 30 W	94.8
351 " 99.8—354 " 00.0	N 52 14 W	200.2
354 " 00.0—356 " 13.0	S 79 41 W	213.0
356 " 13.0—358 " 82.4	S 35 08 W	269.4
358 " 82.4—361 " 51.8	S 10 16 E	269.4
361 " 51.8—363 " 21.2	S 53 13 W	169.4
363 " 21.2—364 " 81.5	N 75 48 W	160.3
364 " 81.5—365 " 81.9	N 58 46 W	100.4
365 " 81.9—370 " 22.4	N 46 43 W	440.5
370 " 22.4—374 " 07.6	N 75 39 W	385.2
374 " 07.6—379 " 34.2	S 28 22 W	526.6
379 " 34.2—384 " 86.3	S 6 26 W	552.1
384 " 86.3—386 " 66.9	S 44 27 W	180.6
386 " 66.9—390 " 21.5	S 51 32 W	354.6
390 " 21.5—396 " 78.2	S 7 02 W	656.7
396 " 78.2—406 " 01.3	S 56 04 W	923.1

Station.				True course.	Distance. (Feet.)
406	"	01.3	410 " 84.0	S 82 23 W	482.7
410	"	84.0	412 " 04.6	S 81 36 W	120.6
412	"	04.6	420 " 22.2	S 18 44 E	817.6
420	"	22.2	426 " 42.1	S 14 10 W	619.9
426	"	42.1	430 " 21.7	S 14 38 W	379.6
430	"	21.7	432 " 03.8	S 13 44 W	182.1
432	"	03.8	440 " 77.7	S 14 18 W	873.9
440	"	77.7	441 " 73.8	S 14 42 W	96.1
441	"	73.8	447 " 21.0	S 14 20 W	547.2
447	"	21.0	451 " 31.5	S 14 28 W	410.5
451	"	31.5	458 " 92.6	S 26 58 W	761.1
452	"	61.5; hemlock 36 inches in diameter; 5 feet to right of station 452 plus 61.5; fore and aft tree.			
455	"	37.0; hemlock 36 inches in diameter; 55 feet to left of station 455 plus 37; side line tree.			
457	"	73.0; poplar 30 inches in diameter; 30 feet to right of station 457 plus 73; side line tree.			
458	"	92.6	463 plus 61.5	N 72 59 W	468.9
463	"	61.5	468 " 94.3	S 72 32 W	532.8
468	"	94.3	470 " 65.0	S 35 02 W	170.7
470	"	65.0	475 " 41.4	S 13 04 W	476.4
475	"	41.4	484 " 08.0	S 52 34 W	866.6
802					
484	plus	08.0	484 plus 72.3	S 23 00 W	64.3
484	"	72.3	486 " 60.0	S 45 19 W	127.7
486	"	00.0	491 " 26.8	S 62 42 W	526.8
491	"	26.8	493 " 08.6	S 30 39 W	181.8
493	"	08.6	496 " 46.0	S 29 50 W	337.4
496	"	46.0	500 " 22.0	S 62 54 W	376.
500	"	22.0	501 " 99.0	S 9 06 W	177.
501	"	99.0	503 " 65.3	S 37 39 W	166.3
503	"	65.3	506 " 68.0	S 26 04 W	302.7
506	"	68.0	510 " 03.0	S 29 15 W	335.
510	"	03.0	511 " 07.0	S 42 23 W	104.
511	"	07.0	519 " 21.0	S 58 23 W	814.
519	"	21.0	524 " 31.6	S 78 59 W	510.6
524	"	31.6	529 " 91.2	N 73 26 W	559.6
529	"	91.2	532 " 63.2	N 53 50 W	272.
532	"	63.2	535 " 43.0	S 86 21 W	279.8
535	"	43.0	536 " 90.0	S 75 19 W	147.
536	"	90.0	538 " 97.4	N 86 57 W	207.4
538	"	97.4	542 " 42.4	S 60 16 W	345.0

Station.			True course.	Distance. (Feet.)
536	"	27.0; hemlock 18 inches in diameter; 1 foot to right of station 536 plus 27; fore and aft tree.		
542	"	42.4—543 plus 81.3	S 14 30 E	138.9
543	"	81.3—549 " 24.5	S 8 54 E	543.2
544	"	12.0; mountain oak 30 inches in diameter; 4 feet to left of station 544 plus 12; side line tree.		
549	"	24.5—562 plus 57.0	S 28 16 E	1,332.5
652	"	57.0— " 68.6	S 11 12 W	811.6
568	"	80.0; [illegible]ain oak 30 inches in diameter; 16 feet to [illegible]ft of station 568 plus 80; fore and aft tree.		
570	"	68.6—575 plus 79.3	S 34 50 E	510.7
575	"	79.3—577 " 49.2	S 29 40 E	169.9
577	"	49.2—588 " 19.5	S 23 20 E	1,070.3
582	"	65.0; mountain oak 30 inches in diameter; 25 feet to left of station 582 plus 65; fore and aft tree.		
584	"	19.0; mountain oak 30 inches in diameter; 25 feet to left of station 584 plus 19; fore and aft tree.		
585	"	87.0; mountain oak 36 inches in diameter; 25 feet to left of station 585 plus 77; fore and aft tree.		
587	"	08.0; double mountain oak 18 inches in diameter; 25 feet to left of station 587 plus 08; fore and aft tree.		
588	"	19.5—591 plus 31.0	S 41 18 E	311.5
591	"	31.0—594 " 88.3	S 60 38 E	357.3
594	"	80.0; sarvis 12 inches in diameter; 5 feet to left of station 594 plus 80; fore and aft tree		
594	"	88.3—599 plus 42.3	S 83 22 E	454.0
599	"	42.3—604 " 32.0	S 60 02 E	489.7
604	"	32.0—606 " 39.0	E 37 58 E	207.

Station.			True course.	Distance. (Feet.)
606	" 39.0—612	" 13.0	S 10 10 E	574.
612	" 13.0—618	" 02.0	S 9 06 E	589.
618	" 02.0—619	" 98.0	S 21 34 E	196.
619	" 98.0—626	" 73.6	S 2 41 E	675.6
626	" 73.6—630	" 07.3	S 47 50 E	333.7
630	" 07.3—631	" 57.8	N 82 06 E	150.5
631	" 57.8—634	" 11.0	N 80 40 E	253.2
634	" 11.0—640	" 64.5	S 67 14 E	653.5
638	" 56.0; mountain oak 24 inches in diameter; 1 foot to left of station 638 plus 56; fore and aft tree.			
640	" 64.5—641	plus 98.6	S 40 33 E	134.1
641	" 98.6—645	" 00.0	S 5 27 E	301.4
803				
645	plus 00.0—649	plus 34.6	S 20° 29′ W	434.6
649	" 34.6—652	" 97.6	S 33 44 W	363.0
652	" 97.6—657	" 39.6	S 33 52 W	442.0
657	" 39.6—659	" 45.0	S 26 05 W	205.4
659	" 45.0—660	" 05.8	S 6 22 W	60.8
660	" 05.8—665	" 22.4	E 17 38 W	516.6
665	" 22.4—666	" 62.0	S 13 56 W	139.6
666	" 62.0—669	" 87.2	S 21 45 E	325.2
669	" 87.2—673	" 13.8	S 42 15 E	326.6
673	" 13.8—676	" 41.0	S 40 48 E	327.2
675	" 14.0; mountain oak 24 inches in diameter; 15 feet to left of station 675 plus 14; side line tree.			
676	" 41.0—679	plus 77.2	S 7 16 E	336.2
679	" 77.2—681	" 54.2	S 22 32 W	177.0
681	" 54.2—687	" 19.2	S 15 00 E	565.0
687	" 19.2—690	" 75.0	S 14 33 E	355.8
690	" 75.0—695	" 64.8	S 4 38 E	489.8
695	" 64.8—696	" 36.2	S 0 16 E	71.4
696	" 36.2—697	" 26.2	S 4 02 E	90.0
697	" 26.2—699	" 36.5	S 16 01 W	210.3
699	" 36.5—702	" 65.0	S 0 30 W	328.5
702	" 65.0—710	" 84.0	S 5 30 W	819.
710	" 84.0—713	" 47.0	S 40 15 E	263.
713	" 47.0—716	" 94.3	S 41 19 E	347.3
716	" 25.0; beech (down) 12 inches in diameter; 1 foot to right of station 716 plus 25; beginning corner of E 1035.			
716	" 94.3; Stratton Bald—Junction.			

804 EXHIBIT Y (Continuation).

Additional Old Marked Trees Identified and Tied to Burns' Line in May, 1910, by S. S. Gannett.

Station.	Description.
32 plus 45	30 feet west of station 32 plus 15 is white oak 20 inches in diameter. North Carolina land corner granted by W. H. Thomas, claimed to be 62nd mile tree.
172	Near station 172, chestnut oak (fore and aft tree), 2 hacks and blaze on west side, tree is 30 inches in diameter and leans towards river; blaze plain on east.
194 plus 50	Cucumber blocked by Hayes in 1897; fore and aft tree.
195 plus 85	Birch (now down), 195 yards above river; side line tree.
196	Poplar 24 inches in diameter, blocked on south side; fore and aft tree.
204	Water birch; side line tree.
255	Hemlock 24 inches in diameter, east side of creek, 3 hacks on east (2 of them plain) blocked it but found hacks did not reach wood (Hayes '97); side line tree.
450	Hemlock 30 inches in diameter, at forks of creek; marked on east N. C. 5M; blocked on west and north.
455	Hemlock 14 inches in diameter; side line tree.
456	Holly 10 inches in diameter; formerly side line tree; names on it Bogle, Hayes, Hale, W. H. P. B.
457	Hemlock 36 inches in diameter, blocked on southeast side; side line tree.
468	Double Chestnut, blocked on southeast side (about 12-15 yrs.), 3 new hacks in block.
484	Chestnut oak 18 inches in diameter; side line tree.
546 plus 40	White oak 2 feet in diameter; blocked by Wilson, Miller, and Hale.
561	Mountain oak 12 inches in diameter; fore and aft tree.
562	Mountain oak 24 inches in diameter; fore and aft tree.
563	Mountain oak 20 inches in diameter; fore and aft tree.
596	Chestnut oak (double); fore and aft tree.

805

Station.	Description.
596 plus 40	Mountain oak 24 inches in diameter; fore and aft tree.
618 plus 60	White oak 2 feet in diameter; side line tree.
620 plus 60	Chestnut oak 18 inches in diameter; fore and aft tree.
626 plus 60	Hemlock 30 inches in diameter; fore and aft tree.
627	Hemlock 40 inches in diameter; side line tree.
628 plus 50	Sarvis (now broken over); 1 hack visible.
630	Hemlock 2½ feet in diameter; fore and aft tree.
681 plus 54.2	Near station 681 plus 54.2; hemlock 18 inches in diameter; fore and aft tree.
690	Near station 690; hemlock 24 inches in diameter; side line tree.
690 plus 150	Hemlock 32 inches in diameter; near station 690 plus 150; side line tree.
1035	Beech (now fallen) corner of 1035 tract.

806 I. S. S. Gannett, being first duly sworn do hereby certify that the foregoing copy of Notes made by D. B. Burns in 1908 was made by me at the request of counsel for Tennessee, and furnished to the Notary & Commissioner, Mr. Frederick S. Tyler before whom my testimony was taken, and that the said copy is a true and correct copy.

S. S. GANNETT.

Subscribed and sworn to before me this 23d day of January, A. D. 1911.

FREDERICK S. TYLER,
Notary Public, D. C.

The Notes referred to are marked "Exhibit Y."

[SEAL.] FREDERICK S. TYLER,
Notary Public, D. C.

807

Exhibit Z.

North Carolina–Tennessee.

Courses and Distances Northeastward Along the North Carolina-Tennessee State Line from the 101st Mile Stone to Jenks Knob as Measured by S. S. Gannett and D. B. Burns April, 1910, and from Jenks Knob to Laurel Top by S. S. Gannett, May, 1910.

808

Station.	True course.	Distance in feet.
0— 1	S 32° 13′ E	354
1— 2	S 63° 51′ E	346
2— 3	S 71° 23′ E	117
3— 4	N 55° 17′ E	186
4— 5	N 39° 31′ E	453
5— 6	N 39° 31′ E	156
6— 7	N 42° 01′ E	403
7— 8	S 75° 00′ E	327
8— 9	N 75° 55′ E	403
9— 10	N 12° 09′ E	427
10— 11	N 72° 44′ E	144
11— 12	N 35° 16′ E	566
12— 13	N 52° 53′ E	252
13— 14	N 52° 04′ E	300
14— 15	N 45° 56′ E	581
15— 16	N 37° 56′ E	313
16— 17	N 21° 21′ E	432
17— 18	N 41° 32′ E	474
18— 19	N 33° 58′ E	279
19— 20	N 52° 48′ E	414
20— 21	N 62° 16′ E	132
21— 22	N 73° 10′ E	120
22— 23	N 69° 21′ E	184
23— 24	N 66° 52′ E	256
24— 25	N 47° 43′ E	300
25— 26	N 60° 40′ E	344
26— 27	N 47° 32′ E	292
27— 28	N 54° 24′ E	346
28— 29	N 80° 36′ E	521
29— 30	N 51° 36′ E	311
30— 31	N 37° 35′ E	254
31— 32	N 37° 20′ E	204
32— 33	N 62° 14′ E	247
33— 34	N 66° 06′ E	1,153
34— 35	N 59° 43′ E	408
35— 36	N 19° 08′ E	108
36— 37	N 11° 23′ W	251
37— 38	N 12° 13′ E	245

Station.	True course.	Distance in feet.
38— 39	N 26° 20′ E	381
39— 40	N 25° 46′ E	172
40— 41	N 6° 36′ E	316
41— 42	N 74° 06′ E	316
42— 43	N 57° 37′ E	305
43— 44	N 46° 44′ E	345
44— 45	N 55° 48′ E	115
45— 46	N 39° 47′ E	329
46— 47	N 51° 08′ E	162
47— 48	N 47° 58′ E	138
48— 49	N 44° 28′ E	220
49— 50	N 55° 13′ E	200
50— 51	N 69° 15′ E	354
51— 52	N 51° 30′ E	104
52— 53	N 50° 41′ E	197
53— 54	N 34° 50′ E	272
54— 55	N 81° 41′ E	720
55— 56	N 73° 16′ E	182
56— 57	N 73° 24′ E	247
57— 58	N 55° 04′ E	355
58— 59	N 65° 21′ E	376
59— 60	N 67° 29′ E	385
60— 61	N 68° 14′ E	190
809		
61— 62	N 50° 50′ E	292
62— 63	N 51° 44′ E	220
63— 64	N 46° 42′ E	260
64— 65	N 41° 22′ E	378
65— 66	N 13° 34′ E	400
66— 67	N 34° 56′ E	293
67— 68	N 31° 29′ E	260
68— 69	N 38° 54′ E	317
69— 70	N 49° 52′ E	175
70— 71	N 53° 25′ E	365
71— 72	N 31° 04′ E	746
72— 73	N 42° 50′ E	506
73— 74	N 54° 39′ E	214
74— 75	N 42° 56′ E	143
75— 76	N 44° 50′ E	1,535
76— 77	N 53° 13′ E	194
77— 78	N 53° 32′ E	690
78— 79	N 61° 06′ E	344
79— 80	N 67° 58′ E	818
80— 81	N 77° 40′ E	271
81— 82	S 53° 39′ E	939
82— 83	N 76° 45′ E	1,069
83— 84	S 47° 18′ E	290
84— 85	S 78° 54′ E	191
85— 86	S 47° 04′ E	766

Station	True course.	Distance in feet.
86— 87	S [illegible]° [illegible]′ E	780
87— 88	S [illegible]° [illegible]′ E	375
88— 89	S [illegible]° [illegible]′ E	307
89— 90	S [illegible]° [illegible]′ E	431
90— 91	S 31° 50′ E	595
91— 92	S 68° 40′ E	401
92— 93	S 21° 12′ E	261
93— 94	S 63° 22′ E	273
94— 95	S 38° 06′ E	431.5
94+260′ vertical angle—15; spanish oak side line tree.		
95— 96	S 8° 53′ W	288
96— 97	S 32° 46′ E	1,258
97— 98	S 35° 48′ E	317
98— 99	S 00° 56′ E	469
99— 100	S 13° 34′ E	413
99+322′; fore and aft 18-inch chestnut-oak tree, 25′ east of line.		
100—101	S 28° 46′ W	136
101—102	S 13° 20′ W	345
102—103	S 18° 40′ E	111
103—104	S 32° 00′ E	710
104—105	S 2° 53′ W	400
105—106	S 27° 10′ W	103
106—107	S 20° 43′ E	1,776
107—108	N 71° 59′ E	717
108—109	N 83° 44′ E	315
109—110	S 80° 38′ E	183
110—111	N 64° 26′ E	375
111—112	N 63° 32′ E	247
111+180′; 18-inch chestnut-oak side line tree.		
112—113	S 53° 20′ E	414
112+250′; fore and aft 18-inch chestnut-oak, 2 hacks and blaze on northwest side, blocked on southeast side, 1 hack above block; tree is 15 feet to left or northeast of line.		
113—114	S 17° 10′ E	310
114—115	S 44° 06′ E	1,805
115—116	N 87° 50′ E	1,472
810		
116—117	N 72° 50′ E	134

Station.		True course.	Distance in feet.
117—118		N 60° 46′ E	108
118—119		S 89° 36′ E	548
119—120		N 56° 14′ E	2,620
120—121		N 50° 29′ E	1,250
121—122		S 56° 10′ E	94
122—123		S 49° 02′ E	348
123—124		S 69° 29′ E	2,399
124—125		N 36° 56′ E	1,021
125—126		N 82° 27′ E	1,698
126—127		S 62° 02′ E	402
127—128		N 65° 13′ E	415
128—129		N 86° 46′ E	2,300
129—130		S 75° 56′ E	723
130—131		S 71° 04′ E	1,069
131—132		S 50° 23′ E	1,641
132—133		S 71° 36′ E	617
133—134		N 76° 08′ E	153
134—135		S 84° 46′ E	320
135—136		S 72° 02′ E	420
136—137		S 75° 16′ E	234
137—138		N 84° 35′ E	587
138—139		N 2° 10′ W	1,149
139—140		N 4° 58′ W	390
140—141		N 24° 28′ W	190
141—142		N 2° 52′ E	176
142—143		N 13° 48′ E	602
143—144		N 19° 50′ E	152
144—145		N 13° 54′ E	217
145—146		N 37° 12′ E	319
146—147		N 81° 10′ E	810
147—148		N 48° 00′ E	991
148—149		N 62° 01′ E	305
149—150		S 73° 20′ E	114
150—151		S 56° 48′ E	301
151—152		S 67° 28′ E	438
152—153		S 51° 05′ E	1,346
153—154		N 57° 32′ E	872
154—155		S 81° 18′ E	463
155—156		N 52° 53′ E	870
156—157		N 82° 16′ E	56
157—158		S 50° 38′ E	902
158—159		S 38° 14′ E	98
159—160		S 43° 58′ E	288
160—161		S 38° 14′ E	291
161—152		S 70° 50′ E	184
162—163		N 81° 58′ E	326
163—164		S 68° 32′ E	948
164—165	Jenks Knob.	N 69° 12′ E	1,390
165—166		N 88° 10′ E	163
166—167		N 64° 03′ E	262
167—168		N 39° 13′ E	460

Station.	True course.	Distance in feet.
168—169	N 21° 52′ E	450
169—170	N 74° 26′ E	310
170—171	N 24° 43′ E	355
171—172	N 75° 24′ E	583
172—173	N 5° 08′ E	294
172—N 36° W, 18 feet distant; a mountain oak 22 inches in diameter, side line tree.		
172—N 5° E, 215 feet distant; a mountain oak 32 inches in diameter, side line tree.		
173—174	N 58° 36′ E	450
811		
174—175	N 35 46′ E	436
174—370′, and 20 feet northwest of line, a chestnut 40 inches in diameter, side line tree.		
175—176	N 70 27′ E	358
176—177	N 87° 41′ E	283
177—178	N 46 36′ E	418
178—179	N 10 20′ W	240
178—S 62 30′ E, 56 feet distant; a mountain oak 38 inches in diameter, fore and aft tree, blocked on southwest side by Jasper Fain, Bob Wilson, in 1899.		
179—180	N 33 50′ W	216
180—181	N 33 53′ W	224
181—182	N 17 46′ E	147
182—183	N 35 38′ E	113
183—184	N 35 38′ E	282
184—185	N 48 57′ E	132
184—N 44° E, 36 feet distant; a holly 16 inches in diameter, decayed on south side, two hacks and blaze on north side; marked on west "86 M"; the holly is 8 feet north of decayed hemlock, 38 inches in diameter; side line tree.		

Station.	True course.	Distance in feet.
185—186	N 36 01′ E	202
186—187	N 30 26′ E	121
187—188	N 43 55′ E	82
188—189	N 36 55′ E	108
189—190	N 50 53′ E	138
189— 7° crossed Tellico River, 20 to 30 feet wide, approximately.		
190—191	N 72 21′ E	233
190—S 85 E, 50 feet distant; an old maple 24 inches in diameter, pointed out by Jasper Fain, Blocked by Francis Lovingood and Hyde.		
191—192	N 51 40′ E	378
192—193	N 69 46′ E	156
193—194	N 69 48′ E	411
193+33′; stump of maple blocked by Jasper Fain and Bob Wilson; block has been produced in court at Knoxville, Tennessee.		
194—195	N 58 01′ E	80
195—196	N 58 01′ E	535
196—197	N 79 10′ E	502
196+100′; black gum tree, 20 inches in diameter; side line tree.		
197—198	S 81 26′ E	303
198—199	N 56 10′ E	470
199—200	S 63 43′ E	132
200—201	N 56 17′ E	240
201—202	N 88 24′ E	132
202—204	N 65 59′ E	385
204—205	N 77 20′ E	240
204— 33′, S 85° E; a chestnut 24 inches in diameter, fore and aft.		
205—206	N 60° 04′ E	362
206—207	N 61 58′ E	335
207—208	N 57 54′ E	498
208—209	N 70 45′ E	406
209—210	N 84 02′ E	221
210—211	N 84 02′ E	199
211—212	N 70 48′ E	559

Station.	True course.	Distance in feet.
211—N 68° E, 113 feet distant; mountain oak, 30 inches in diameter, side line tree.		
212—213	S 80 55′ E	385
213—214	N 53 03′ E	262
213—N 82° 30′ W, 188 feet distant; locust 18 inches in diameter, side line tree.		.....
812		
214—215	N 53 03′ E	301
215—216	N 83 18′ E	547
216—217	N 46 26′ E	453
216—S 69° W, 95 feet distant; mountain oak, 22 inches in diameter; side line tree.		
217—218	N 58° 18′ E	498
218—219	N 37 36′ E	180
219—220	N 10 25′ W	399
220—221	N 32 23′ E	330
220+270′; a mountain oak; a fore and aft tree, blocked by Hale, and pointed out by Jasper Fain.		
221—222	N 38 56′ E	700
222—223	N 84 03′ E	431
222+350′; a mountain oak; blocked by D. B. Burns, April, 1910; side line tree.		
223—224	N 59 02′ E	242
224—225	S 89 00′ E	257
225—226	N 64 00′ E	260
226—227	N 15 15′ E	186
227—228	N 15 15′ E	184
228—229	N 45 45′ E	647
229—230	N 56 05′ E	499
230—231	N 28 38′ E	203
230+120′; chestnut tree; side line tree 30 inches in diameter.		
231—232	N 49 37′ E	532
231—95′; mountain oak 36 inches in diameter; side line tree.		
232—233	N 43 14′ E	595

Station.	True course.	Distance.
232—9.7′, N 57° E; chestnut, 24 inches in diameter; side line tree.		
233—234	N 9 40′ E	816
233+475′, N 2° E; mountain oak, 30 inches in diameter; side line tree.		
234—235	N 29 52′ E	178
235—236	N 2 18′ E	355
236—237	N 51 01′ E	172
236+27′, N 62° E; chestnut tree, 4 feet in diameter, with four prongs; side line tree.		
237—238	N 31 34′ E	605
238—239	N 30 54′ E	263
239—240	N 30 54′ E	412
240—241	N 21 40′ E	351
241—242	N 24 22′ E	270
242—243	N 66 18′ E	137
243—244	N 60 50′ E	74
244—245	S 81 53′ E	49
245—246	N 72 05′ E	336
246—247	N 42 14′ E	244
247—248	N 55 31′ E	312
248—249	N 51 22′ E	834
249—250	N 58 56′ E	296
250—251	N 65 12′ E	109
251—252	N 53 47′ E	870
252—253	N 54 41′ E	96
253—254	N 65 48′ E	140
254—255	N 64 57′ E	180
255—256	N 45 11′ E	1,104
256—257	N 36 32′ E	296
257—258	N 41 28′ W	466

Station 257 on south end of Laurel Top, equals station 1092 plus 23.4 of D. B. Burns.

813 I, S. S. Gannett, being first duly sworn do hereby certify that the foregoing copy of Courses and Distances northeastward along the North Carolina-Tennessee State Line from the 101st mile stone to Jenk's Knob as measured by S. S. Gannett and D. B. Burns in April, 1910; and from Jenk's Knob to Laurel Top by S. S. Gannett in May, 1910, is a true and correct copy made by me from original notes, and same is marked Exhibit Z.

S. S. GANNETT.

Subscribed and sworn to before me this 23d day of January, A. D. 1911.

[SEAL.] FREDERICK S. TYLER,
Notary Public, D. C.

814 R. W. COLLETT, being first duly sworn, testified as follows:

Examined by DUFF MERRICK, Esq.:

Q. What is your name?
A. R. W. Collett.
Q. How old are you?
A. Thirty-eight.
Q. What is your profession?
A. Civil Engineer.
Q. What experience have you had in surveying land in Graham and Cherokee counties, North Carolina?
A. Four or five years.
Q. In what business are you now engaged?
A. I am employed by the Department of Agriculture of North Carolina.
Q. Are you familiar with the country at the head of Tellico river which is in dispute between the states of North Carolina and Tennessee?
A. Yes, sir.
Q. Do you know where the line concerning that dispute was located by the judgment in the case of Stevenson versus Fain, tried in the Circuit Court of the United States for the Eastern District of Tennessee?
A. I understood it was located on what is known as State ridge.
Q. Have you surveyed any or all of the lands lying within the disputed territory referred to, and, if so, how did you make such survey, and for whom?
A. I surveyed practically all of the tracts of land in dispute in 1907 for the Snowbird Lumber Company.
Q. Did you make any plat of that survey?
A. I did.
Q. Have you a copy of that plat with you?
A. I have.
Q. Do you know where the line between the counties of *of* Graham and Cherokee comes to the ridge which forms the line between the states of North Carolina and Tennessee?
A. Yes, sir.
815 Q. Have you indicated that upon the map, and, if so, how have you indicated it?
A. Yes, sir; it is indicated upon this map by the large letter "A."
Q. Running from the point "A," how does the line between the states of Tennessee and North Carolina, as located by that survey, run—in what general direction?
A. Southwest.
Q. What does that line run with?
A. The state ridge?

Q. Have you ever surveyed this state ridge?

A. I surveyed all the State ridge from a point approximately three quarters of a mile southwest of the point "A" to the Tellico river.

Q. Did you survey all the state ridge along that boundary line.

A. Yes, sir.

Q. That took you a little beyond Tellico river?

A. Yes, sir.

Q. Did you find any marks on that line?

A. The only marks I have any recollection of seeing were on the line of the marks I was looking for.

Q. Were you looking for State line marks?

A. No, sir.

Q. Your survey was not made in reference to locating the state line?

A. No, sir.

Q. Do you remember any distinct old marks on that line near the Tellico river?

A. I remember a holly tree.

Q. Do you remember on which bank of the Tellico river was that you refer to?

A. It was quite a distance from the river on the southwest side.

Q. Do you show where you understand the Tennessee contention of the location of the line between the two states in that country is?

A. It is shown by the red dotted line on my map.

Q. Was that line actually surveyed by you, or platted in as you platted the entries?

816 A. It was not actually surveyed, but was located by crossing the main line there, and sketched in.

Q. Have you surveyed the following grants issued by the state of North Carolina and issued upon the following entries, and do they appear upon your plat, to wit:

Entry Nos.	Grant Nos.
6595	3512
1691	9084
1352	3748
1349	3747
1310	3753
1353	3746
1312	77
1314	70
2580	76
1321	3744
1317	72
7749	3839
6909	2552
6644	2565
2091	2571
6908	2564
8439	16153

7855..... 9105
8017.....10799
8200.....13124
7994.....10800
8205.....13123
8469.....16181
8442.....16182
8438.....16179
8514.....16935
8515.....16936
8516.....16937
2776..... 2931
4990..... 2941
7854..... 9104
4024.....14121
5079..... 2208
4403..... 2945
4402..... 2943
1331..... 3752

Pre-emption No.

269..... 2131
581..... 1312
501..... 1722
622..... 2731?

A. I have.

Q. Are those tracts correctly located on your map?

A. Yes, sir.

Q. Do you know where, what is called in that country, the "Tipton place," is?

817 A. Yes, sir.

Q. Do you know who lived there at the time you made your survey?

A. At the time I made my survey one Beavers lived there.

Q. Do you show that on your plat?

A. It is marked with a red cross on the plat.

Q. On what tract or entry did he live?

A. On pre-emption 622, marked, "Beavers' Res."

Q. Do you know where Jasper Fain lived when you made that survey?

A. Yes, sir.

Q. Have you shown that on your plat?

A. I have.

Q. How is that marked?

A. Also marked with a red cross "Fain Res."

Q. At the corner upon your plat there is a tract of land that has no entry or grant number. How does that happen?

A. The survey I wished to make didn't cover that. It was largely covered by entry No. 7749 and other tracts.

Q. Then, that land is not vacant?
A. No, sir.

Plaintiff offered in evidence the map just testified to by the witness, marked, "Complainant's Exhibit No. F" filed before me July 9th 1910. Edmund B. Norvell, Notary Public & Comr."

(Here follows map marked Compl. Ex. "F.")

MAPS

TOO

LARGE

FOR

FILMING

Also certified copies of the entries and grants referred to, which are in the following words and figures, to-wit:

R. W. COLLETT,
By EDMUND B. NORVELL,
Notary Public & Commissioner.

Cross-Examination: None.

818 W. P. CHAMBERS, a witness of lawful age, being first duly sworn, introduced on behalf of plaintiff, testified as follows:

Examined by F. A. SONDLEY, Esq.:

Q. What is your name?
A. W. P. Chambers.
Q. Where do you live?
A. Seven miles West of Cleveland, Tennessee.
Q. In what county?
A. Bradley County?
Q. What is your business?
A. I have been a land surveyor.
Q. How much experience have you had?
A. Thirty three years.
Q. With what class of land has your experience been principally?
A. Principally mountain lands. I have surveyed some other.
Q. Have you had much experience in timber land?
A. Yes, sir.
Q. What position of a public nature have you held in your county, if any?
A. I was county surveyor of Monroe County for eight years.
Q. Did you live at one time in Monroe County, Tennessee.
A. Yes, sir.
Q. Monroe County joins North Carolina at this point of controversy?
A. Yes, sir.
Q. Do you think from your experience as a surveyor you could form an opinion satisfactory to yourself in regard to matters of surveying?
A. I think I could.
Q. Do you know the Slick Rock neighborhood?
A. Yes, sir.
Q. When did you first know of that neighborhood where Slick Rock Creek enters Tennessee river?
A. Do you mean from experience?
Q. First from reputation when did you first hear of it?
A. Along about 'eighty, and prior to that time. I very
819 commonly heard it spoken of.
Q. Did you ever at any time have any experience in an attempt to arrest any body in the neighborhood of Slick Rock Creek?
A. Yes, sir.
Q. Tell us what took place, please?

A. I can't tell you exactly the year. It was about 1882. I was deputized to arrest a man name Shope.

Q. By whom were you deputized?

A. By the Sheriff of Monroe County, Mike Keen.

Q. What did you attempt to do and what did you do?

A. Mr. Shope lived on Tellassee Creek and I went up there to arrest him.

Q. To whose house did you go first?

A. I first went to Mr. Merony's house and then I went to Shope's house.

Q. Did you find him?

A. No, sir.

Q. Where did you go from there?

A. I went to Buck Straton's.

Q. Why did you go to his house?

A. I was in a hurry, and I thought Buck Straton could give me some information as to where he was.

Q. What did he tell you about him?

A. He said that he understood that Shope had gone over into North Carolina.

Q. What was the rest of the conversation?

A. I asked him how far it was to North Carolina, and he said it was just a few miles over to North Carolina.

Q. Why didn't you go over after him?

A. From the looks of the country I didn't think a man had any business over there after a criminal.

Q. Did you have any process that would carry you into North Carolina?

A. No, sir.

Q. When was your next experience with Slick Rock Creek? How did it occur?

820 A. I made a survey of that country in eighty-three.

Q. How did you come to make that survey?

A. Mr. W. L. Albright wanted to enter that land between Slick Rock creek and Hangover. I suppose it is the same land that is now in controversy. I commenced on the North East corner of fractional township two, Range five, in Ocoa Township, Monroe County. I ran then south 68 'till we struck the dividing ridge between Fodder Stack and the Bob Strutton bald, and there we turned south and went around the divide till we struck the Tennessee line.

Q. By whose directions did you run that line in that way?

A. Mr. Albright.

Q. Whom did he purport to be entering the land under; North Carolina or Tennessee?

A. Tennessee.

Q. What was the result of that survey?

A. In the meantime Mr. H. M. McCroskey had been talking about making an entry and I notified him what was going on. Mr. McCroskey made an entry in a general way. Mr. Albright wanted his entry in a fractional way. They carried the entry to the general

entry office, and then to the Governor, but the Governor refused to sign the grant at that time.

Q. Why would he not sign the grant?

A. I only know what I was informed. The Governor said there was no vacant land in there, and he would not sign the grant.

Q. When did you have your next acquaintance with that country?

A. About three years ago.

Q. How did you come to go into there then?

A. Mr. Clark, of Maryville, come to see me. I had moved to Bradley county, and he claimed that he had a party who had an entry for that land in 1883. I believe he called it, the Martin or Griffith entry.

Q. Did you survey it again?

A. Yes, sir. I commenced at the mouth of Slick Rock creek and run up the creek as before.

Q. Do you know what the result of that survey was?

A. Only what I have heard?

Q. State what you have heard?

821 (Respondents except to the testimony of the witness as to what he has heard, and also except to the testimony in regard to the issue of grants under the entries of McCroskey and Albright.)

Q. Did you hear anything in regard to the last survey you mentioned?

A. I understood that the Babcocks Lumber Company had compromised the matter with Mr. Griffith's heirs.

Q. When were you next in that country?

A. Last November a year ago.

Q. How did you happen to go there at that time?

A. I went there in the interest of Mr. Cozad.

Q. For what purpose?

A. For the purpose of looking up the line and showing the line to Mr. Mayfield, of Cleveland, an engineer.

Q. What did you do?

A. I had directions to show Mr. Mayfield the best I could, how the line was run, and I showed him the marks and the most prominent objects.

Q. What document did you carry along at that time in search of the line?

A. I carried some maps along. Mr. Mayfield wanted to know about the Ocoa District. He took some maps along, and wanted to see if Slick Rock Creek corresponded with the name of the creek laid down on the map.

Q. That was a map of the Ocoa District?

A. Yes, sir.

Q. Was it an official map?

A. Yes, sir.

Q. Did you have any knowledge of what the map purported to be?

A. The map was made in 1827.

Q. By the Commissioners who located the dividing line between the States?

A. Yes, sir.

Q. Have you seen that map?

A. Not 'till I went to Knoxville a year ago.

Q. Did you have a copy of that map on that trip?

822 A. I think Mr. Mayfield had a copy of it.

Q. When you got up into that country what steps did you take?

A. We first went on the south end of it. No, let me correct that. We crossed the river at Telassee ford and went across the river, and went up the river to where the State line is said to cross the river; then we went north about a mile and found marks there.

Q. Did you find State line marks there?

A. Yes, sir; and then I proceeded to show Mr. Mayfield how it was marked; then we went on down the river and as we went down the river we found three marked trees.

Q. Before you left the ridge on the North side did you look across the river?

A. Yes, sir; and we set our compass and took bearings on the most prominent points.

Q. What did you observe in relation to the shape of the ridge from the north side?

A. When you look directly south, the Hangover peak shows up a little more prominent, but in a general way the line up slick Rock creek and Fodder Stack seems to be the most prominent way to get out.

Q. Why does it appear to be the most practical way to get out?

A. After going down the river immediately after you cross the river you butt up against a considerable bluff, and when you get up to Hangover, you have a decline, and it is so rocky you can't get up there.

Q. From the mountain on the north what is the appearance of Slick Rock?

A. Down Slick Rock it was rough, but as you gradually go up to Fodder Stack Lead it has the appearance from there of being a smooth ridge up to Stratton bald.

Q. How would the direction on the north side compare with the course, the State line took at that point?

A. It would be in the general course; a mile or little more West.

Q. How would Hangover be?

A. Considerably south.

Q. That would involve a considerable change?

823 A. Yes, sir.

Q. When you got down to the river, you found what there?

A. We found there a pine.

Q. What is right opposite that pine across the river—what kind of land?

A. Rough, steep mountain land.

Q. I wish you would describe the mountain bluff, or whatever is opposite that point?

A. After you go immediately across the river you have to make a climb. I don't know whether a man could climb it or not. I don't think I would want to climb it.

Q. Why not?

A. Because it is almost impossible for a man to get up there.

Q. How high is it?

A. Two or three hundred feet.

Q. Did you ever survey over it?

A. No, sir.

Q. How far was that from the river?

A. About a quarter of a mile, or something like that then you go up again.

Q. When you turned down the river, you said something about finding some other trees; in going down the north side from that pine, what is the first tree?

A. A chestnut oak.

Q. Was it marked?

A. Yes, sir.

Q. How was it marked?

A. With three hacks, on the Northeast side as you go down the river.

Q. Did you proceed further down the river from there?

A. We went down a little further and found a maple marked.

Q. Where was that?

A. In a little bend of the river.

Q. How was it marked?

A. With three hacks.

824 Q. On which side?

A. The north side.

Q. Proceeding down the river, what was the next tree?

A. A black gum, marked just below the mouth of Slick Rock creek.

Q. How far from the river?

A. Two rods.

Q. How was it marked?

A. With three hacks.

Q. On which side?

A. The West side.

Q. The side next to the river?

A. Yes, sir.

Q. Those marks on the chestnut oak, maple and black gum, which you have just spoken of; what was their appearance as to age?

A. They were old. The black oak, appeared to be older than the others.

Q. The black oak?

A. The chestnut oak. It showed that the weather had beat upon it more than the others, but they all had the same general appearance of being marked with the same instrument, at the same time.

Q. How did it compare in these respects with the line-trees which you had found on the ridge?

A. Very much the same.

Q. When you went from that black gum, where did you go?

A. It was getting dark, and we crossed the river and went out to a man's house named Cline, and stayed all night.

Q. Where did you resume the work next day?

A. Right at the mouth of Slick Rock creek.

Q. Where did you go?

A. Up Slick Rock creek a mile and a half.

Q. What did you find?

A. Marked trees.

Q. How were they marked?

A. With three hacks.

Q. How far did you go before you turned off from the
825 creek?

A. We turned up the ridge there, and went up to Little Fodder Stack Lead. We had found a line in the trail before that.

Q. Tell us what you had found in the trail before that?

A. I found a line generally marked up the creek.

Q. How far up?

A. As far as I went around up to Stratton bald.

Q. You found it marked from the river to where it left the creek?

A. Yes, sir. Up the ridge to Fodder Stack Lead, and from there to the bald.

Q. Did you find any marks between the mouth of Little Slick Rock creek and where you left Slick Rock Creek?

A. Yes, sir; we often found marks all along. I can't state exactly what trees. A man could satisfy himself that the line had been run up there.

Q. After you left Slick Rock Creek, the marks went in what direction?

A. Westerly, toward Big Fodder Stack.

Q. Did you find marks along on those trees?

A. Yes, sir.

Q. How did those marks from the North of Slick Rock up to Big Fodder stack compare in appearance as to age with the marks you found on the north side of the river?

A. They had the appearance of being marked with the same instrument, in the same manner, at the same time. The most prominent tree we found was called the five mile tree, marked with three hacks, with the letter "M" on it.

Q. In your first effort or observation of Slick Rock creek, did you attempt to make any survey there that didn't succeed, and which you desisted from?

A. How is that?

Q. Did you ever undertake to make any survey for White and Bearden of those lands?

A. Some time about 1882. They wanted their land located, and Mr. McCroskey and Hicks were law partners. Mr. Hicks come to

my house; I lived in White Creek flats, and he proposed that
826 we walk across the mountain and survey the White and Bearden land. That was the first talk of the survey. We started out, and Mr. Hicks gave out. We didn't go but a little piece until he said he couldn't go any further, and we went back home.

Q. Did he tell you when you started where to begin the survey?

A. Yes, sir.

Q. Where?

A. Up above the mouth of Slick Rock creek, about a half a mile.

Q. You spoke a while ago of a bluff opposite the pine on the north bank of the river; did you ever attempt to make a survey from the river up that bluff?

A. No, sir.

Q. You stated, that you were told to begin a survey of the White and Bearden tract up above the mouth of Slick Rock creek?

A. Yes, sir.

Q. Above the mouth on what stream?

A. It was above or about what is called the mouth of little Slick Rock.

Q. On which side of Slick Rock creek?

A. On the West.

Q. Now going on with what I was asking about, did you ever attempt to make any survey over that bluff opposite the pine?

A. From the river on the south?

Q. From the river in any direction?

A. No, sir.

Q. Did you ever attempt to make it coming down to the river from Hangover?

A. Yes, sir.

Q. Tell us what your experience was at that bluff?

A. In 1883 when I made a survey around up to the top of the hill and down the hill, we didn't try to survey down the hill. I didn't consider it necessary to be very particular about it. It looked like you would be jumping off into the river. It was about a half a mile
827 down to the river, and I just estimated the distance and guessed at the distance from where we struck the river down to the mouth of the creek. I estimated it at a half a mile, and we pulled up our stake, and went home at that time.

Q. Did you make any effort to place a flag there?

A. When I made the survey, for the Morton heirs, they wanted it done very accurately, and when I got down to that same point, I went a little further down the hill, and I didn't see how a man could carry a chain over that, and I didn't think I could get down there with a compass. I took a handkerchief and tied it on a bush, and went down to the river and took a bearing on an object on the other side of the river and camped there that night. The next morning, I got an object across the river, and took a bearing back on the same line. I changed the line 'till I got near the line where that pine is, which is in dispute. I got the course of that line, and then measured the distance to the river, and took a bearing back to the flag, and calculated the distance. I had two angles and one side.

Q. How did you get from Hangover down to the river?

A. I pulled along by bushes and anything that I could get a hold of*f*. Sometimes I scooted down.

Q. Did you ever go back after your handkerchief?

A. No, sir.

Q. Why not?

A. I didn't think it was worth going after. After we measured the distance to the river, it lacked a few poles — being half a mile.

Q. You said that you went out there once and attempted to make a survey for a Mr. Albright; at whose house did you stay that night?

A. The first night we stayed at Glenn Dare's, and the next night at Bob Strutton Meadows, at a shanty there; and the next day went down below Cold Spring Gap, and around from Hangover to the river, and our rations give out there; and Mr. R. Shaw was in the party, and he said we could get rations from Uncle Jack Miligan, and we went over there that night.

Q. Where did he live?

A. About a half a mile above the mouth of Telassee Creek.

828 Q. You say you went to Jack Miligan's?

A. Yes, sir; we stayed all night there.

Q. Did you have any conversation with Jack Miligan?

A. Mr. Albright did, in my presence.

Q. What was the nature of the conversation?

A. Mr. Miligan wanted to know what we were doing out there, and Mr. Albright told him that we were runni-g the State line. Then they talked on a little bit, and Mr. Miligan said "the line runs up Slick Rock creek, and you can't move it". He seemed to be mad because we were trying to move the State line.

Q. Did he and Albright agree about it?

A. No, sir. They had a pretty warm discussion, and finally I said that we wanted some grub, and wanted to pay him for it, and he seemed to be pleased at the idea that he was going to get pay for it, and didn't say much more.

Q. You say they had some pretty warm words?

A. Yes, sir, they had some pretty hard words. He said the state line didn't go over Hangover, that it went up the creek. I thought at one time that he was not going to let us stay all night.

Q. You spoke of Jack Miligan living on Telassee Creek; where is Telassee Creek?

A. It is about six miles below Slick Rock creek; may be a little more or little less.

Q. From which side of the river does it run into Tennessee?

A. The south side.

Q. The same side as Slick Rock?

A. Yes, sir.

Q. On which side from Tellassee Falls?

A. Maybe a mile. It is between a half mile and a mile.

Q. How far is it from First Creek?

A. Well, I don't know. First Creek is up above Telassee I reckon.

Q. Have you ever examined a copy of that map, made by the Commissioners, who located that line in 1821?

A. Yes, sir, I have looked at it.

829 Q. Do you remember how that line purports to run immediately after crossing Tennessee river?

A. Yes sir.

Q. Suppose you had been given that map as your guide in making a survey of the State boundary from where they started on the north side of the river somewhere, following the state line down to the river, and thence on, which way would you go in order to follow that map or plat?

A. In the neighborhood of Slick Rock creek, you would go up Slick Rock creek.

Q. And to what point next?

A. Up to Fodder Stack, and from there Southwardly according to the plat, and then still in a southwesterly direction.

Q. Then, as a surveyor, you say the location of that line would carry you up Slick Rock creek, and to Big Fodder Stack?

A. Yes, sir.

(Respondents excepts to the testimony of the witness as to what the map shows, because the map itself is the best evidence, and respondent also excepts to the testimony of the witness in which he proposes to detail the conversation between Albright and Jack Miligan in regard to the state line, because the same is hearsay, and incompetent.)

Cross-examination, subject to the foregoing exceptions.

By T. E. H. McCroskey, Esq.:

Q. You spoke of finding some marked trees down the Tennessee River, above the mouth of Slick Rock creek, down to and below the mouth of Slick Rock creek, and you stated that those marks you have found them in Ocoa, Hiawassee Districts.

A. Yes, sir.

Q. Three hacks is the mark in Tennessee for section lines, is it not, and surveying out tracts of land?

A. No, sir; not for sections, townships, or anything of that kind.

Q. What does three hacks indicate in Tennessee?

A. It is said to be a State line mark.

830 Q. What are the marks in Tennessee land marks?

A. In running a range line, or township line, they mark with a hack and a blaze, and a hack below. The section lines they mark with two hacks for quarter sections; corners are marked with three hacks, with pointers; that is my experience as a surveyor, as I found them in Ocoa, Hiawassee Districts.

Q. Then there are three hacks indicating line marks in Tennessee?

A. Only as corners.

Q. Did you undertake to note those marks you found down below the mouth of Slick Rock creek?

A. Down the river?

Q. Yes, sir?

A. Yes, sir; I was up and down the river three times, and I never found any below there. They might have been there.

Q. Just after you had made that survey a year and a half ago, your deposition was taken at Knoxville in the case of W. R. Hopkins and others, against Charles Hebard, et als.?

A. It was about that time.

Q. Did you testify about those marked trees?

A. I can't say positively.

Q. As a matter of fact, didn't you say that you didn't find any marked trees?

A. Down the river?

Q. Yes, sir?

A. No, sir; I don't think I did.

Q. The first tree you say was a chestnut oak?

A. Yes, sir.

Q. Which direction were the marks with reference to the river?

A. They were a little up the river, and to the north of the river. They were not on the same side of the river. By going down the stream and coming to the tree, they look like they had been marked on the upper side.

Q. With three hacks?

A. Yes, sir.

831 Q. What was the next tree?

A. A maple, with three plain marks, near the river where it makes a little bend.

Q. Which direction with reference to the river?

A. They were going down the river and marked on the north side of the river, running in a westerly course.

Q. The marks were on the side away from the river?

A. Yes, sir.

Q. How about the other trees?

A. The black gum below the mouth of Slick Rock creek was marked on the west side.

Q. That would be next to the river?

A. The river there makes a bend. Coming up Slick Rock creek they would be on the side next to the river; but considering coming down to that point, it would be in the direction the river is coming.

Q. Were those marks made as indicating a man going down the river or up the river?

A. The maple and chestnut oak were marked as if the man was going down the river, and the others as if he was coming up the river. The only discrepancy was about the gum, and the others were marked as if going down the stream, but the gum was marked on the opposite side. In the line we run up the creek and across the creek.

Redirect examination.

By F. A. SONDLEY, Esq.:

Q. You stated, Mr. Chambers, that in Tennessee three hacks were used to indicate a corner. I understand by that you mean three hacks on the side you approach the tree, and three hacks on the side you leave the tree; is that right?

A. From where the corner hits the tree, you mark it with three

hacks as a corner tree. If it is the corner of a section, you put hacks on four sides, denoting that it is a corner tree. If you only have a fractional side, you mark the side you hit, and the side you start off.

Q. You mark the side you strike with three hacks?

832 A. Yes, sir.

Q. And the side you leave with three hacks?

A. Yes, sir; but if you miss the tree you plant a rock down by the side of it, and you blaze one side and make another blaze indicating that the corner is there, if the corner should be torn up.

Q. Then if you make the corner on a tree, it takes six hacks to make the corner, three on one side and three on the other?

A. Yes, sir.

Q. Did the three trees you have mentioned, the maple, oak and black gum, have marks on both sides?

A. No, sir.

Q. Did any of them have pointers, or witness marks around them?

A. I didn't see any.

Q. I understood you to say that the marks on the chestnut oak and the maple indicated that he who placed them there was going in the direction of down the river?

A. Yes, sir.

Q. And the marks on the black gum indicated that he who placed them there was going up the river?

A. He was going in an opposite direction across the river and up the creek.

Q. Those on the black gum indicated that the marker crossed the river and went up the creek?

A. Yes, sir.

Q. Were they going as if they had been inflicted by a man going across the river, up Slick Rock creek, and going from the chestnut oak?

A. They were indicated as if the man was going across the river and up the creek in the line with the marked trees, up above the mouth of Slick Rock.

Q. How does the boundary of the Ocoa District as heretofore recognized by Tennessee run in that neighborhood on Slick Rock creek? How nearly did it coincide with the State line?

A. The map which is filed in the office at Cleveland shows the line going up Slick Rock creek to Fodder Stack, then in a southerly direction to Bob Stratton Bald.

833 Q. It runs up Slick Rock creek, from its mouth, to Big Fodder stack and from there up to Stratton Bald?

A. Yes, sir. Along the dividing waters of Citico and Slick Rock creek.

Q. How familiar are you with the grants and records in Monroe County, Tennessee?

A. Well, I have had considerable experience in surveying and have examined the records.

Q. Did you ever find any grants made by the State of Tennessee, given as crossing Slick Rock creek, prior to this survey you were sent in there to make in 1883?

A. Not to my knowledge.

Q. If there had been such grants, would you have known of them during your experience as a surveyor?

A. I think so.

Q. You would have known it from the old records?

A. I think so; for I have examined the records, and there are none among the records which I have examined.

Q. Where do those grants, near Slick Rock creek, run?

A. They run about as the creek does.

Q. Do they just reach the creek and stop?

A. Yes, sir the sections and fractional sections along there.

Q. Their running only to the creek caused the necessity of making fractional sections?

A. Yes, sir. The sections are indicated from the creek.

W. P. CHAMBERS,
By EDMUND B. NORVELL,
Notary Public & Commissioner.

834 JAMES CRISP, a witness of lawful age, being first duly sworn, testified as follows:

Examined by F. A. SONDLEY, Esq.:

Q. What is your name?

A. James H. Crisp.

Q. What is your age?

A. Thirty eight.

Q. Where do you reside?

A. In Graham County, North Carolina.

Q. What is your occupation?

A. I am a surveyor.

Q. How long have you been a surveyor?

A. Going on six years.

Q. How much experience have you had in surveying during that period of time?

A. I have been engaged the greater part of the time.

Q. In what character of country?

A. In the mountainous section of Graham county, for the most part, and have surveyed some of the flat land.

Q. Graham County joins Cherokee County, North Carolina?

A. Yes, sir.

Q. Have you ever held any position of a public nature in Graham County?

A. Yes, sir.

Q. What was that?

A. I have been county surveyor for six years and was Justice of the Peace for four years.

Q. From your experience, in matters of surveying through that country, do you think you could form an opinion satisfactory to yourself relative to matters of surveying, and surveys in woods?

A. Yes, sir; I think so.

Q. Do you know where Slick Rock creek empties into the Tennessee river?

835 A. Yes, sir.

Q. When was your attention first called to the line between Tennessee and North Carolina?

A. The first search I ever made for it, was during May, 1910.

Q. How did you come to make that search?

A. A gentleman employed me to assist him in making the survey. A man by the name of H. M. Kent.

Q. Why did he want to survey it?

A. He was a stranger in there, and he claimed to me that he was sent there by an attorney, by the name of Shields.

Q. For whom?

A. An attorney name- Shields, representing the landholders of Tennessee.—The Babcock Lumber Company principally.

Q. What did he employ you to do?

A. To hunt up the old lines.

Q. What did you and he do?

A. We went to the Smoky Mountain on the north side of the Tennessee river and hunted up the line where it is not in dispute; and we set in next where there is a dispute over the line.

Q. How did that block count out? How many years?

A. It counted out from eighty seven to ninety years. Part of the tree had fine growths, and it was pretty hard to determine. I can state that it was not less than eighty seven or more than ninety years.

Q. What tree was that?

A. Spanish oak.

Q. About how far from the river?

A. We didn't measure the distance to the river, but it is something like a mile, perhaps a little further.

Q. Did you make any observation as to the direction of the state line at that point?

A. At that point we had no instrument with us to take a bearing. Mr. Kent got a straight stick and took a general direction of the mountain back towards Smoky Mountain.

Q. That was in a northerly direction?

836 A. Yes, sir. And he turned to a high peak to see where it would strike southwesterly from there, and it showed that it would strike a straight course or bearing to the ridge. It seemed a straight bearing to the ridge, and to Slick Rock creek, or a short distance below the mouth of Slick Rock creek.

Q. In what direction going toward Big Fodder Stack?

A. It was almost in a direct line toward Big Fodder Stack.

Q. Where did you go from there?

A. We wound around the ridge to the Tennessee river, and come to the spruce pine where it was said the state line struck the river, and we looked at that and crossed the river, and come on back where we started out, and then went up Slick Rock creek.

Q. Where did you go from there?

A. We made a search up Slick Rock creek a short distance. We dropped in on the creek about a mile from the mouth of the creek,

and made a search up the creek between a quarter and a half a mile, and passed one hemlock tree, rather on the east bank, or a short distance from the east bank that looked like it had been blocked. I didn't go very close to the tree to examine it, and then we went on that water-shed of Slick Rock creek and topped up that top around by little Fodder Stack then around up by the top of Big Fodder Stack and made a search for the old line, but we never found any satisfactory marks of the old line until after we passed Big Fodder Stack. After we passed Big Fodder Stack, we found a good many trees about half way between Big Fodder Stack and Stratton Bald. We found two large hemlocks, and we blocked one of them marked as a fore-and-aft tree, and we counted; and we counted the growths and they counted the same as the tree we had blocked on the Smoky Mountain. We took the hacks out and set the block on one side of the tree on the side that we had taken the block out of, and left it in the tree. And the next day we wanted to find where the line reached the top of Big Fodder Stack. We found that, and then we went down Slick Rock to the point of the ridge leading up to Big Fodder Stack, and made a little search there, and it wasn't very long until I found a tree that showed three hacks, and I said that it was
837 the state line tree. We blocked that tree and counted the growths and that corresponded with the one back on Smoky mountain. Mr. Kent said there was no need of making any further search. That he was satisfied with what we had done. He said he would make his report to his people, and that he would carry the blocks along with him to show what he had found.

Q. What were the conclusions you reached in regard to the state line along there?

A. We reached the conclusion that it run up Slick Rock to Fodder Stack and then up Fodder Stack with the main divide.

Q. Looking from the point where you blocked the tree on the north side of the river, which would be the most natural course for a surveyor to take?

A. Being on the north side of the Tennessee river, it seems to me that the most natural course would be up the creek or up the ridge west of the creek. The most natural course would be either up the creek or the ridge west of the creek, and make the line up the Big Fodder Stack branch.

Q. If you take the Little Fodder Stack direction, you have to make a short turn to the right?

A. Yes, sir, after you get up some distance.

Q. If you take the Big Fodder Stack route you would not make any change in the direction?

A. By that way, the nearest course would be up the creek.

Q. You say you found no marked lines up Little Fodder Stack?

A. No, sir; not until we passed Big Fodder Stack.

Q. Did you make any investigations up the ridge that runs up to Hangover?

A. Part of it. He put in a right smart time on that. At least he said so. I only put in one day on that.

Q. Where did you go next?

A. We traveled along Hangover something like the distance of three miles.

Q. In what direction?

A. Going along Hangover, and from there to Stratton Bald.

Q. What did you find?

838 A. Nothing except some new marked lines. The lines were marked as state line marks, but they were new. They didn't show to be over twenty years old at the outside. Then, there was an old corner, there, that we passed along, that I knew was there.

Q. That was a corner of a private tract of land?

A. Yes, sir.

Q. How thoroughly did you search along there for state line marks?

A. Just as thoroughly as we could.

Q. Did you ever know a man by the name of Peary Johnson?

A. Yes, sir.

Q. When did you first know him?

A. I have known him I would say fifteen years; up to three or four years ago.

Q. Did you ever hear any declaration from him in regard to the Slick Rock line, and if so, what was it?

A. Yes, sir; I heard him speak about where the state line was at that place, some three or four years ago; and he said that he had talked with men in Tennessee that claimed they was along when the state line was surveyed. I remember one man's name was Calloway.

Q. Which Calloway?

A. I don't remember. Calloway told him they run up Slick Rock Creek to Greenbrier ridge, and from there to the top of Big Fodder Stack.

(Respondents except to the testimony of the witness in regard to the declarations of Peary Johnson as to what Calloway said. Respondents decline to cross-examine this witness at present, and reserve the right to cross-examine, if in the future they should desire to do so.)

JAMES CRISP.
By EDMUND B. NORVELL.
Notary Public & Commissioner.

Court adjourned until 1 p. m. tomorrow.

839 FRANCIS M. LOVINGOOD, a witness of lawful age after being first duly sworn, was called on behalf of the plaintiff and testified as follows:

Examined by DUFF MERRICK, Esq.:

Q. Where do you live now?

A. In Polk County, Tennessee.

Q. Did you ever live in North Carolina, and if so, how long did you live there?

A. I was born and raised in Cherokee County, North Carolina.

Q. How old are you now?

A. I am fifty-five.

Q. How long did you live in North Carolina?

A. I lived there until three years ago last March.

Q. Were you a witness in the case of Stevenson versus Fain, which was tried in the United States Circuit Court at Knoxville?

A. Yes, sir.

Q. About that time, and prior thereto, what official position did you hold in North Carolina?

A. I was County Surveyor of Cherokee County.

Q. How long had you been county surveyor?

A. I don't remember just now, but it was upwards of twenty years, with the exception of two years.

Q. Do you know the controversy in the case of Stevenson against Fain?

A. Yes, sir.

Q. Do you know where the defendants in that suit, the Fains, claimed the state line between North Carolina and Tennessee was located?

A. Yes, sir.

Q. Do you know where the plaintiffs in that case, Stevenson and others, claimed the line between North Carolina and Tennessee was located?

A. Yes, sir.

Q. Did you ever make a survey of the lines representing the two claims of the different parties?

A. Yes, sir.

840 Q. Was that survey made in connection with that suit?

A. No, sir, I think not.

Q. When was it made?

A. We made that survey in May, 1897.

Q. Who employed you to make that survey?

A. It was done under an Act of the Legislature of North Carolina.

Q. What was the purpose of the survey?

A. I hardly know how to answer that question.

Mr. McCROSKEY: The respondent excepts to the witness stating what the purpose of the survey was, because the Act of the Legislature itself would state what the purpose was.

Q. What line or lines were you trying to locate in making that survey?

A. We were trying to locate as best we could where the state line had been first surveyed.

Q. In making that survey where did you begin?

A. At the mouth of Slick Rock Creek on the Tennessee River.

Q. From there where did you run?

A. We run up Slick Rock Creek for a little bit over five miles and then we turned up the ridge, following, as we thought, the original hacks, and run up to the top of Big Fodder Stack, and then continued on around the top, passing Laurel Top and on to the County Corner, and then we took down the State Ridge, as we call it, crossed

the Tellico River and went up the Jenkins Ridge to the top of the Unicoy, and then followed that ridge to the top of Beaver Dam Bald.

Q. What you referred to as the County Corner is the place where Graham and Cherokee Counties come together?

A. Yes, sir.

Q. Running from the county corner, what direction did you go?

A. We run a southwest course.

Q. Have you your notes of that survey?

A. Yes, sir.

Q. Can you give us the notes?

841 A. Yes, sir. We run a general southwest course. We took the angles as the mountain meandered.

Q. You have the general direction?

A. Yes, sir.

Q. In running a southwest course along what you call the State Ridge, did you find any marks, and what was the character of those marks?

A. The trees were marked with three hacks.

Q. Did you find any marks?

A. Yes, sir, we found quite a number of marks.

Q. Continuing on down the State Ridge you said that you crossed the Tellico River. Did you find any marked trees near the Tellico River, and if you did, what did you find?

A. We blocked a maple on the north side of the river that had old marks on it, and then, some 150 yards or a little more from there, we found an old holly.

Q. On which side of the river?

A. On the southwest side.

Q. How was the holly marked?

A. "86-M."

Q. How far from where you began on the Tennessee River to this holly marked "86-M," did you make the distance?

A. Twenty-one miles and some poles, about 21 miles and 200 poles.

Q. Going back to the County Corner,—from there to the Tellico River, did you block any trees?

A. Yes, sir, we blocked one near Mr. Fain's,—a large chestnut.

Q. Who was along with you when you blocked the two trees you have testified about?

A. Mr. Fain was along when we blocked the chestnut, and Mr. Hyde the County Surveyor of Graham County, and quite a number of others,—Mr. Oliver Williams was there, and quite a number of others.

Q. How old were the hacks on the blocks taken out of those trees?

A. They were very old.

Q. Did you count the rings?

842 A. Yes, sir.

Q. What year did the count show that the hacks had been made in?

A. We were satisfied in our opinion that the marks bore the date when the original hacks of the survey of 1821 was made.

Q. What is the character of that ridge, from Laurel Top to the Tennessee River, is it a broken or continuous ridge?

A. It is continuous, as I call it, for these mountains, it is a smooth ridge.

Q. As you approach the Tennessee River, how close to the river does the mountain come? Does it descend to the river bank?

A. It is something like three-quarters of a mile.

Q. Does the ridge continue after you cross the Tellico River?

A. Yes, sir. This ridge, there, has always been called the Jenkins Ridge, on the south side of the river.

Q. Is the ridge running from the county corner to the river and the Jenkins Ridge, running from the river up the Unicoy Mountain, the same or different ridges?

A. It appears to be the same ridge.

Q. It is a continuous ridge?

A. Yes, sir.

Q. Did you ever survey or examine the line contended for by the plaintiffs in the case of Stevenson against Fain, running from the county corners to what is shown on their map as the Gold Bryson Gap?

A. Yes, sir. That is the line that goes around the head of Tellico.

Q. Did you make any examination for marks?

A. Yes, sir.

Q. Did you find any marks?

A. None that we considered state line marks.

Q. How many trees did you examine along that line?

A. The southwest part of it or at least the southerly part of it, and we went back there since that time and examined the other part of it.

Q. What point do you mean by the southerly part?

A. The main divide between Tellico and Snowbird, continuing around till we struck the head of Beaver Dam. That was a
843 way back long before this law suit come up I examined that line; and since that time I examined Fain's line on Tellico and along the top; but if there was any marks there I was never able to find them.

Q. What did the three hacks indicate?

A. The state line.

Q. Fore and aft or side line?

A. Side line.

Q. You say you found no marks?

A. None at all.

Q. When you get to the county corners, if you follow the line contended for by the plaintiffs in the case of Stevenson against Fain what direction would you run from the county corners? That is the Tennessee contention.

A. Do you mean what course?

Q. Yes, sir.

A. You would have to run a southeast course.

Q. What angle would that line be compared with the line down State Ridge?

A. Right angles.

Q. If you run from the county corner in a southeastern direction, along the line contended for by the plaintiffs in that suit, what would be the nature of the ground or the topography of the country you would go through?

A. You would just go down the side of the mountain from the county corner until you got down somewhere near Mitchell Licks and then strike the divides of the waters on Tellico and Snowbird. I suppose, as a matter of course, that it might be the divides from the county corner, but it don't show so.

Q. If you were at the county corners, and looking for a main ridge, which way would you go from there?

A. I expect if I was a stranger in that country I would have went down the state ridge.

844 Q. Is there anything, looking in a southeastern direction, to indicate that is the main ridge?

A. No, sir, it don't look so.

Q. You spoke about finding a holly marked "86-M," near the bank of the Tellico River. Was there any tree near that holly marked?

A. Yes, sir, there was a spruce pine.

Q. How was it marked?

A. Three hacks on one side.

Q. On which side of the river?

A. The southwest side.

Q. How near to the holly?

A. I don't remember exactly, but it was not very far. I think ... passed the holly just before we got to the spruce pine.

Q. How far does Jasper Fain live from the line you went down on the State Ridge?

A. Not very far. I don't think it is over 100 or 200 yards.

Q. On that part of the line running from the Tennessee River up Slick Rock Creek and thence up to the top of Big Fodder Stack, did you block any trees on that part of the line?

A. I don't remember.

Q. Who was with you on that part of the survey?

A. Mr Hyde, the County Surveyor of Graham County, and Oliver Williams and others.

Q. Did you find any marks on that line?

A. Yes, sir. I don't remember finding any marked trees right up Slick Rock Creek; but it is my recollection that we found some after we left the creek and turned up the ridge leading to Big Fodder Stack,—we found plenty of marked trees.

Q. How did you come to run the line from the Tennessee River up Slick Rock Creek? Why did you locate the line there?

A. Well, I don't just now remember, but my recollection is that Mr. Hyde and those people there had from some evidence decided that to be the line on account of finding this line leading from the

creek up the ridge. The country was strange to me. I had
845 never been there before, and they seemed to be satisfied in their minds that the line run up the creek.

Q. You depended on Mr. Hyde and his associates for information as to the line going up that creek?

A. Yes, sir.

Q That was Mr. Hyde's county?

A. Yes, sir.

Q. That line, from the head of the mountain to the Tennessee river, is the boundary of what county?

A. Graham County.

Q. On your survey of the state line, running from the Tennessee river up Slick Rock Creek, did you note any particular tree or trees in your notes of that survey?

A. I don't remember that I did on the creek.

Q. Turn to your notes on that and refresh your recollection?

A. Well, we followed this creek, Slick Rock Creek, as near as we could, and when we stopped we stopped at a spruce pine.

Q. How was that spruce pine marked?

A. I don't remember that it was marked at all, but we marked it.

Q. How did you mark it?

A. "N. C." on the east side and "5-M."

Q. How far was that from the mouth of Slick Rock Creek?

A. Something over five miles.

Q. Is that the place you turned to go up the ridge?

A. Yes, sir.

Q. Where does that tree stand with reference to Slick Rock Creek,—what prong?

A. Well, it is a little over five miles from the mouth of the creek and at the mouth of the first branch that runs north of the Big Fodder Stack. That is the way I have my notes.

846 Cross-examination.

By T. E. H. McCroskey, Esq.:

Q. I believe you stated that you made this survey in 1897?

A. Yes, sir.

Q. What time in the year?

A. In May.

Q. You began at the mouth of Slick Rock Creek?

A. Yes, sir.

Q. You stated that you had not been on Slick Rock Creek prior to that time?

A. No, sir.

Q. And you have never been there since?

A. Yes, sir, quite a number of times since.

Q. Surveying?

A. Yes, sir.

Q. How long since?

A. I don't remember exactly the number of years since I was there the last time, but it has been about four years.

Q. After 1897 how long was it until you first went in there again?

A. I can't give you the date.

Q. Can you approximate the date?

A. I think it was four or five years, to the best of my recollection. I was in there on the Thomas lands.

Q. Were you in there surveying the Thomas lands?

A. Yes, sir.

Q. You say that Mr. Hyde, the county surveyor of Graham County, was with you?

A. Yes, sir, when I run the state line.

Q. Was there any other surveyor along?

A. No, sir.

Q. There was a suit then pending over the location of the state line in the Slick Rock Region, was there not?

A. Not that I have any recollection of.

847 Q. Don't you know as a matter of fact that Mr. Hyde was in there locating that line preparatory to being a witness in the case of Hebard against Belding and others?

A. I have no recollection of it.

Q. You know that he was a witness in that case?

A. No, sir, not that I know anything of.

Q. What other surveyors were with you at the time, besides Mr. Hyde?

A. None at all.

Q. You began at the mouth of Slick Rock Creek, because Hyde had suggested that the state line crossed there, is that correct?

A. No, sir, not altogether that. It seemed to be the understanding with the citizens, that I talked with, that, the line run up Slick Rock Creek. The country was strange to me. I had never been there before, and Mr. Hyde being the county surveyor of Graham County, I rather let him run matters in that section.

Q. How did Mr. Hyde happen to be there?

A. The Act of the Legislature required both of us to *to* make the survey. We had some correspondence and reached an agreement as to when we would start; and I went to his house and stayed all night, and the next morning we left there and pitched our tents, and started on the survey.

Q. Hyde and yourself were both mentioned in the Act of the Legislature?

A. Yes, sir.

Q. And for that reason Mr. Hyde accompanied you?

A. Yes, sir.

Q. On that part of the line pertaining to Graham County you deferred to Mr. Hyde?

A. Yes, sir, he was the leader in that particular. I had something to say in the matter, but I let him lead matters because he was more familiar with that country than I was.

Q. After you reached the line adjoining Cherokee County, North Carolina, Mr. Hyde deferred to you as to your judgment of the location of the line?

848 A. Not altogether. We both had our opinions and we conferred with each other on the marks we found. We found plenty of marked trees to our satisfaction. He thought we were correct, and I did, too.

Q. You were more familiar with your end of the survey than he was?

A. Yes, sir.

Q. You spoke of finding marked trees on the line down what is called State Ridge?

A. Yes, sir.

Q. Before you crossed the river?

A. Yes, sir.

Q. You were asked if you counted the growths. Please state whether or not you did count those growths and whether you were able absolutely to count the growths and how many growths had occurred since the marks were made?

A. Yes, sir, we counted the growths; but, as to stating exactly, I could not do that. I would not say that it counted to a positive date, but we become satisfied in our minds that, from the growth of the trees we blocked, these hacks all seemed to be hacked at the same time, as near as we could tell from the growths on the timber; and they were older than any land surveys made in this country. I don't know about the dates in Tennessee. And by their being hacked with three hacks and everything considered, we decided beyond question that they were state line hacks.

Q. Didn't you state in your deposition in that case, Mr. Lovingood, that you were unable to count the growths, but from your best judgment they corresponded with the date of the running of the state line survey?

A. I don't remember whether I stated that or not. I will say now that I am sure we counted the growths of the timber; but I can't say as to the positive dates.

Q. Didn't you state, to be specific, that you could not count the growths to show the exact number of years since the trees has been marked?

A. I don't remember that I did. I may have done it, but
849 I don't remember. I think, surely, we could have counted the growths; but we might not have got the date correct. I mean by that, that we might not have got within a year or two years of the survey; but I don't think I stated that we didn't count the growths.

Q. What you stated at that time would be correct, in as much as your deposition was taken in only a short time after the survey was made?

A. It looks like it would be.

Q. There would be more probability of the correctness of your statement in that deposition than the correctness of the statement you now make?

A. My recollection might fail me to some extent, of course, it being a good long while since.

Q. In other words, would not the statement you made in your

deposition at that time be more reliable than the statement you make now at the present time, thirteen years afterwards.

A. It seems that my recollection would be fresher, of course.

Q. And more reliable at that time?

A. I don't know whether it would be more reliable or not.

Q. I don't mean in the sense that you would tell an untruth, but you would be more accurate in your memory?

A. My recollection would be fresher that long time back.

Q. The probability is that your statement would be more accurate than the statement you make at the present time?

A. It might be.

Q. You said those trees were marked with three hacks?

A. Yes, sir.

Q. All the way down the state ridge?

A. Yes, sir.

Q. You also said that you blocked a maple a short distance from the river?

A. Yes, sir.

Q. Have you seen what is called the newly discovered map of the line between North Carolina and Tennessee, the map which is claimed to have been found in the capitol at Nashville, Ten-
850 nessee, some four, five or six years ago?

A. I saw a map yesterday that was said to be a copy of that map.

Q. That map has not yet been introduced in evidence, but did you examine the map carefully?

A. I looked at it a minute or two. I don't think I examined it very carefully.

Q. You didn't examine it sufficiently to be able to say from memory what the map showed?

A. No, sir.

Redirect examination.

By Duff Merrick, Esq.:

Q. What did you do with the blocks you took out of those trees on the State Ridge?

A. The one I took out of the tree, near where Mr. Fain lives, I carried it to my home over here, seven miles from here, and when I moved away I left it at my home. And the one I took out of the maple, down near the river, I left out there.

Q. Didn't you file one of those blocks with your testimony in the case of Stevenson against Fain?

A. I think those blocks were taken afterwards. Mr. Fain got me to go back and investigate the south side of the Tellico.

Q. What Fain was that?

A. Allen Fain.

Q. Who was with you?

A. Jasper Fain, Marr and Deaver.

Q. What did you do with those blocks?

A. I brought them to Murphy to be used in some evidence that

was being taken by Mr. Shields; and from here they were taken to Knoxville.

Q. They were filed with your deposition?

A. Yes, sir.

Q. Did you ever look for that block you took out on the first survey?

A. Yes, sir, I went up to my old home to look for it this
851 morning. It has been destroyed.

Q. You couldn't find it?

A. No, sir.

F. M. LOVINGOOD,
By EDMUND B. NORVELL,
Notary Public & Com'r.

852 FRANCIS LOVINGOOD recalled.

Examined by BEN POSEY, Esq.:

Q. Do you know what number the Tipton tract is?

A. Yes, sir.

Q. What number is it?

A. 622.

Q. Isn't it 611?

A. No, sir, it is #622.

FRANCIS LOVINGOOD,
By EDMUND B. NORVELL,
Notary Public & Com'r.

853 UNITED STATES OF AMERICA,
North Carolina, Cherokee County:

THE STATE OF NORTH CAROLINA
against
THE STATE OF TENNESSEE.

MURPHY, *May 10th*, 1911.

Pursuant to notice heretofore given, and agreement of counsel for plaintiff and defendant, the undersigned Edmund B. Norvell, Special Examiner, this day proceeded to take evidence in behalf of the plaintiff, when there was present, representing the State of North Carolina, as its counsel, Benjamin Posey, and representing the State of Tennessee as its counsel, T. E. H. McCroskey, when JOHN R. MCLELLAND, witness in behalf of the State of NorthCarolina, after being first duly sworn upon the Holy Evangelists of the Almighty God, to speak the truth, the whole truth and, nothing but the truth, and being examined on behalf of the State of North Carolina by Benjamin Posey, testifies as follows:

Q. What is your name, age, and place of residence?

A. John R. McLelland, forty-seven, Murphy, N. C.

Q. Do you know anything about the line between the State of North Carolina and the State of Tennessee, between the Tennessee river, westward to the Unaka road or to the Hiwassee river?

A. I have been over it.
Q. Did you ever survey that line?
A. Yes.
Q. When?
A. I believe it was in 1893.
Q. Have you ever been on that line since, or any part of it?
A. Part of it.
Q. How did you come to make the survey you made in 1893?
A. Why, I believe I was appointed by the State of North Carolina.
Q. Where did you begin that survey?
A. A. Unaka Turnpike road.
Q. Which direction did you go?
A. Northeast.
Q. Towards what?
A. Tennessee river.
Q. In making that survey did you find any indication of the state line having been run and located by the commissioners in 1821, at any point, if so at what place after you left the turnpike road?
A. Found them along the top of the mountain.
Q. What mountain?
A. Unaka Mountain. One holly tree marked 86 m. and
854 several marked trees on what is known as the State ridge and marked trees till we come to Fodder Stack.
Q. From there where did you go?
A. Went on down the Fodder Stack Lead to the Little Tennessee river.
Q. How were these trees marked?
A. Three chops on the side which is the state line mark.
Q. Have you been on any part of the state line since that time?
A. Yes.
Q. Where, next to the Tennessee river?
A. Yes, next to the Tennessee river.
Q. Now, at any time have you seen anything to indicate where the state line was located by the commissioners in 1821, if so what have you seen and where?
A. Up Slick Rock Creek from Tennessee River, marked trees first on one side and then on the other side of said creek, to the ridge that leads down from Fodder Stack to the forks of the Slick Rock Creek.
Q. Then where did the line lead to after you found the trees marked up to the Fodder Stack Lead.
A. Lead up to Fodder Stack.
Q. Was that where you had surveyed before?
A. Yes.
Q. And then you turned off to Little Fodder Stack?
A. One of the Fodder Stacks, believe it is Big Fodder Stack.
Q. What kind of marks was it you say you found up Slick Rock Creek?
A. State line marks.

Q. State whether or not you did anything to satisfy yourself about the age of those marks, if so what did you do?

A. Blocked five or six different trees and counted the rings on th-m.

Q. From that blocking a*b*d counting the rings were you able to form an opinion as to when the trees were marked.

A. Yes counted back to 1821.

Q. Now, how long has it been since you were there, at the time you found out about these trees?

A. Been about twelve or fourteen years.

Q. Would that line which was indicated by those marks up Slick Rock Creek to this Fodder Stack Lead connect with the survey where you left it there, in 1893 as you were going towards the river?

A. Yes.

Q. Do you know where Laurel Top is?

A. Yes.

Q. Do you know where County Corners is?

A. Yes.

855 Q. In going a Southwest direction from Laurel Top, past County Corners towards the Unaka road, where you began in 1893, what ridge or mountain would you follow as the main ridge?

A. If a man had never been in there before he would follow the State ridge, because the other does not look like a ridge.

Q. Do you know the line around by McDonald Bald, as claimed by Tennessee to be the State line?

A. Yes.

Q. You ever been around the line?

A. Yes.

Q. To get to McDonald Bald from the State ridge, how would you go to get off the top of the State ridge, in other words, would you follow a ridge, leading off or would you go down the mountain for some distance into a deep depression, or how is that?

A. Go down the side of the mountain for about one-half a mile into a deep gap.

Q. Then how, is that line, a ridge or is it high points and low gaps?

A. It is high points and low gaps most of the way.

Q. What is the difference in the two lines from Laurel Top to the Unaka road, or the line you have just spoken of, and the state ridge line?

A. It is about six miles as well as I can recollect.

Q. You spoke of finding a holly near the Tellico river, an 86 mile tree on the state ridge line, was that on the west side of the east side of Tellico river.

A. It was on the west or south west side.

Q. As a surveyor and from your knowledge of that country, and from what you have seen, the trees you have blocked, and all the information you have been able to get by your own observation and re-search in that country, where, in your opinion was the state line located in 1821, from the Tennessee river to the Unaka turnpike road?

Exception by defendant.—Respondent excepts to the foregoing question, and the witness answering thereto, because the question as propounded does not bring the witness within the rule: and second from the testimony of the witness, his opinion is not competent evidence. Answer subject to exception.

856 A. Up Slick Rock Creek to Fodder Stack, along the main divide to Laurel Top, down state ridge to Tellico River; up Jenks Ridge to the Unaka Mountain, and with the mountain to Unaka turnpike road.

Q. What is your profession?

A. Mighty hard to tell. Do most anything.

Q. Are you a surveyor?

A. I have been.

Q. What was your profession at the time you were making these surveys, and looking for the state line?

A. Surveyor.

Q. Is it from your knowledge of surveying and your own observation and what you actually found, that you gave the opinion above stated?

A. Yes.

Q. When you made the survey by the authority of the state in 1893, that you spoke of, to whom did you send you- report, if anybody?

A. Secretary of the State of North Carolina.

Q. You have not a copy of that report.

A. No.

Cross-examination, subject to exceptions.

By T. H. McCroskey, attorney for defendant:

Q. As I understand you were employed by the State of North Carolina to locate this line between North Carolina and Tennessee. That you did the work under said employment and afterwards you sent your report to the Secretary of State of North Carolina. Is this correct?

A. Yes.

Q. You made that survey in 1893 I believe. Is that correct?

A. I think it was in 1893.

Q. Now who was along with you as *to* pilot, when you began this survey and during the time you were doing the work?

A. I do not know as we had any pilot.

Q. Did you not have parties along with you who professed to know the location of the line?

A. I do not believe we did when we first started.

Q. Then when you got near the Tellico river, did you have some person who professed to know the true location of the line to go with you?

A. No.

Q. Was not Jasper Fain along with you, when you ran that line down along the Jenks ridge and the State line?

A. Yes.

Q. Did not Jasper L. Fain point out to you the tree or holly, that you said was marked 86 m?

A. Yes.

Q. Could you or would you have found the 86 m tree unless Jasper L. Fain, or some other person, knowing its location, had pointed it out to you?

A. No, it could have been found, but I do not suppose I

857 would have found it.

Q. Going from Unaka turnpike road and running backwards, that is northeast, you had no trouble in following the line on top of the ridge, until you came to where Jenks ridge branched off, did you?

A. No.

Q. Now, at Jenks ridge or where it branches off the main ridge, continues on in a south-east direction, does it not lead around the head waters of Tellico river?

A. Yes.

Q. Then what induced you to turn to the left and run down Jenks ridge toward Tellico river?

A. We found no marks on the line around the head of Tellico river, but did find marks on Jenks ridge and the State ridge.

Q. You did not run around the head waters of Tellico river at that time, Mr. McClelland?

A. I know I did not.

Q. How far around did you go?

A. Three or four miles.

Q. How far is — around the head waters, from Jenks ridge to Laurel Top or County Corners?

A. About twelve miles.

Q. You say you found ma*k*red trees on Jenks ridge, where about on Jenks ridge?

A. Near the Tellico river.

Q. What kind of a tree was that?

A. Holly and spruce pine.

Q. Where was the spruce pine located with reference to the Holly?

A. Near the Holly.

Q. Please be more explicit Mr. McClelland, and tell us how far from the holly, what direction, and how far from Tellico river?

A. About four hundred feet from Tellico river, and the spruce was about fifteen feet from the Holly.

Q. Whi*h*e direction from the holly?

A. Southwest.

Q. What kind of marks was on this spruce pine?

A. Three chops.

Q. Which side of the pine were the chops on?

A. I don't recollect.

Q. And you say that the spruce pine was only about fifteen feet from the holly?

A. That is my recollection.

Q. This spruce pine was on top of the ridge, was it?

A. Yes sir, top of Jenks ridge.

Q. Was the Holly on top of Jenks ridge also?

A. Yes sir.

858 Q. And you say the Holly was about four hundred feet from the river and on the west or southwest side, and that both the holly and the spruce pine were on top of Jenks ridge?

A. On the top or point of Jenks ridge.

Q. When you say it was on the point of the ridge, you mean the point that leads to the river?

A. Yes sir.

Q. That is the *determinus* of the ridge next to the river?

A. Yes.

Q. Who pointed out the spruce pine and the three chops, to you Mr. McClelland?

A. I don't recollect, who, it was some man in our party.

Q. You did not block either one of the trees?

A. No sir.

Q. Jasper Fain was with you at this time?

A. Yes.

Q. He was also with you after crossing the Tellico, and as you went up the state line was he not?

A. Yes.

Q. He pointed out what he regarded the state line marks going up the State ridge, did he?

A. Yes.

Q. After getting to the head of the state ridge, from there, on going North-east, you had no trouble until you came to the Fodder Stack Lead, did you?

A. That is all the Fodder Stack Lead all the way around from the river.

Q. Let me see if I understand you, you say that it is all called Fodder Stack Lead from Laurel Top on around to Tennessee river, is that correct?

A. Yes.

Q. You understand that all of the mountain around the State line and to the Tennessee river, is called Fodder Stack Lead, is that correct?

A. One lead is called Fodder Stack.

Q. Please explain yourself.

A. Just a little beyond Laurel Top the mountain divides, one ridge runs around from Fodder Stack and the other Hangover, forming Slick Rock basin between the two.

Q. When you came to where the ridge forks, that is the Hangover and Fodder Stack, how could you tell where the Fodder Stack branched off?

A. I do not know how — could tell it, except by a trail leading off down that way.

859 Q. Standing on the main ridge at the Junction of Fodder Stack, you can not see where Fodder Stack joins to the main ridge can you?

A. It doesn't look as though it was the leading ridge at that point.

Q. In fact you have to go down the side of main ridge three

to five hundred feet before you strike or reach the Fodder Stack ridge at its Junction with the main ridge. Is not that true?

A. Yes.

Q. Who was your pilot at this point, showing you how to reach the Fodder Stack?

A. Did not have any.

Q. How did you know how to get down on the Fodder Stack then?

A. Had been there years before.

Q. You knew the country and did not need a pilot?

A. At that point.

Q. At that point the Hangover is more prominent, is it not?

A. Yes.

Q. You followed the Fodder Stack Lead over Big Fodder Stack; thence following the same lead over Little Fodder Stack, and thence continuing you passed over what is called Stiff Knee and thence to the Tennessee river, did you not?

A. Yes.

Q. How far below the mouth of Slick Rock Creek did you strike the Tennessee river?

A. Three or four hundred feet.

Q. Did you put up any mountain or mile mark indication-you survey-, and if so what?

A. Yes, stones at each mile.

Q. Did you put any marks upon the stones, and if so what?

A. Yes, figures.

Q. What did the figures indicate?

A. Number of miles from Unaka Turnpike road and from Cattalooche turnpike road.

Q. So the stones there were marked on two sides, were they?

A. They were all marked on two sides, we marked the first one with figures *wo* that would be 100 and the other would be 1; then the next mile post would be 99 and 2; and the next mile post would be 98 and 3.

Q. These figures that you are giving here, are only to illustrate and you do not mean that they are exactly correct?

A. I believe Captain that was the way they were marked. It was one hundred one miles to the Unaka Turnpike road.

Q. The mile post at Tennessee river, what figure or number did the rock have on it?

A. Sixty-two I believe is what is down there, either sixty-
860 two, sixty-three or sixty-one, I would not be positive, as we were about four miles to- long with our measurements.

Q. You mean that the line as you run it from the Unaka turnpike *raod*, that is the one hundred and fi-st mile to the Tennessee river, was three to four miles to- long as you run it?

A. Yes sir.

Q. Do you think that you made an accurate survey, Mr. McClelland?

A. We tried to.

Q. Have you ever read the report of the Commissioners locating

the State line between North Carolina and Tennessee, as laid down in the code of North Carolina?

A. Yes sir.

Q. That report says, "Crossing Tennessee river at sixty-five mile" does it not?

A. Yes sir.

Q. It says, "thence to the main ridge" does it not?

A. Yes sir.

Q. And along the extreme height of the same to where it is called Unacoy or Unaka mountain, is that correct?

A. Yes sir.

Q. If it calls for crossing Tennessee river at sixty five miles; then to the main ridge and along the extreme height of the same to where it is called Unacoy or Unaka mountain, why would you have run up Slick Rock Creek?

A. It might have been easier way to get to the top up the creek.

Q. To get *of* the top up what?

A. The mountain.

Q. Did you go from Tennessee river over the Hangover lead?

A. No.

Q. You do not know how rough it is around that Lead do you?

A. Not from the river to the top.

Q. You do know how rough it is up Slick Rock Creek, do you?

A. Yes.

Q. And it is very rough, is it not?

A. Yes.

Q. Who was along with you when you made the survey up Slick Rock Creek.

A. H. S. Hayes and J. C. M. Bogle.

Q. Were they both surveyors?

A. Yes.

Q. Did you survey a line up Slick Rock Creek?

A. I did not.

Q. Did they survey a line up Slick Rock Creek whilst you were along with them?

A. Yes.

Q. Did they survey all the way up Slick Rock Creek from its mouth to the ridge that leads up to Big Fodder Stack?

A. Yes.

Q. Are you positive about that Mr. McClelland?

A. Yes sir.

Q. To refresh your memory, is it not a fact that J. C. M.
861 Bogle and H. S. Hayes, surveyed only a part of the way up Slick Rock Creek, and for about three miles it was so rough that they could not follow up the creek, and took off sets on the side of the mountain instead of following the creek?

A. No sir.

Q. Did you find marks all the way *of* Slick Rock Creek to the ridge that leads down *of* Big Fodder Stack?

A. Yes.

Q. You are pos-tive now that they did survey all the way up Slick

Rock Creek, and you are pos-tive further than that, that you found marked trees all the way up the creek, am I correct?

A. Yes.

Q. After leaving the creek how did you run?

A. Up the ridge to Fodder Stack, the little ridge that runs in between the forks of the creek.

Q. I suppose you found marks on that ridge also?

A. Yes.

Q. How many marks did you find along the ridge?

A. Three or four.

Q. How did you happen to be along with Bogle and Hayes, when this line was run?

A They employed me to help them.

Q. Who employed you?

A. Hayes and Bogle.

Q. Why did they employ you, did they want your assistance as a surveyor, or as a pilot or as a guide?

A. Neither one.

Q. Then why were you along, what service did you perform?

A. Chainman.

Q. So you were employed as a chain carrier or bearer instead of a surveyor, is that correct?

A. Yes.

Q. What year was this that you run up Slick Rock Creek with Bogle and Hayes?

A. It must have been 1896 or 1897.

Q. This while a suit was pending between Hibard and Belding, was it not?

A. Yes.

Q. When you began the survey with Hayes and Bogle, did you begin directly at the mouth of Slick Rock Creek?

A. Yes.

Q. Were you over on the north side of the Tennessee river locating the state line?

A. No sir.

Q. Do you know anything about the topography of the country north of the river, that is were you ever on the north side of the river and along the state line?

A. Not near the point.

Q. How near the point then?

A. Ten or fifteen miles I guess.

Q. Before you went on this line to l-cate it in 1893 had you ever had *nay* experience in locating the State line between North
862 Carolina and Tennessee?

A. No sir.

Q. Did you ever undertake to follow the State line in this particular section before that time?

A. No sir.

Redirect examination.

By BENJAMIN POSEY, for plaintiff:

Q. You spoke of a Holly and a spruce pine and other marked trees you saw on the state ridge line, and on the Jenks ridge, what was the appearance of these marks as to age?

A. Very old.

Q. You spoke of your line around the Fodder Stack Lead, being three or four miles to- long, would it have been longer or shorter, had you run down Slick Rock Creek to the river?

A. Shorter.

Q. Where was Mr. Bogle from, the man who was with Hayes and yourself?

A. Tennessee.

Q. Mr. McLelland were you in Knoxville, Tennessee about the 16th day of last January, when evidence was being taken or was to be taken by the state of Tennessee, in regard to this state line?

A. Yes.

Q. At whose instance did you go there?

A. Attorney General for the state of Tennessee, Cates.

Q. Who paid your expenses for going there, and per diem, if you got any?

A. Attorney General Cates.

Q. Did you see and have a conference with the attorneys for the State of Tennessee in this litigation on this occasion.

A. Yes.

Q. Where?

A. In the office of the Attorney General in Knoxville.

Q. Who informed you, if you remember who, the Attorney General Cates wanted you to come to Knoxville?

A. Mr. Posey.

Q. When you were in the Attorney General Cates' office, were you there examined, as to what you knew about this State line by the Attorneys for the State of Tennessee?

A. Yes.

Q. Were you placed upon the stand to testify on that occasion before the Commissioners to take testimony?

A. No.

Q. Why if you know were you not examined?

A. I do not know?

Q. Who told you that they did not care to examine you or to take your deposition?

A. Mr. Cates.

Q. Mr. Cates the Attorney General, I suppose?

A. Yes.

Q. Were you discharged as a witness by him?

A. Yes.

863 And further this deponent, says, not.

JOHN R. McLELLAND.

Subscribed and sworn to before me, this the 10th day of May, 1911.

[SEAL.] EDMUND B. NORVELL,
Special Examiner.

I, Edmund B. Norvell, Special Examiner, hereby certify that the foregoing evidence was taken before me, and subscribed and sworn to by John R. McClelland, on the 10th of May, 1911, and the same was read over and corrected by Mr. McClelland before he signed same.

[SEAL.] EDMUND B. NORVELL,
Special Examiner.

864 In the Supreme Court of the United States

STATE OF NORTH CAROLINA
vs.
STATE OF TENNESSEE.

On this, the 5th day of September, 1911, in the court room of the Supreme Court of Tennessee, for the Eastern Division at Knoxville, Tennessee, the examination of witnesses on behalf of the State of Tennessee was resumed pursuant to the agreement of the parties herein, entered into by the Attorney General of North Carolina and the Attorney General of Tennessee—the examination being before Samuel E. Cleage, Esq., Clerk of the Supreme Court of Tennessee, and the testimony being taken in shorthand by agreement of parties and to be written up by the stenographer, William Meyerhoff; when and where the State of North Carolina was represented by the Hon. T. W. Bickett, Attorney General of North Carolina and by Messrs. Theo. F. Davidson and F. A. Sondley, and the State of Tennessee was represented by Charles T. Cates, Jr., Attorney General of that State and by Col. T. E. H. McCroskey of Madisonville, Tennessee, as counsel.

JOHN R. MCCLELLAN, Esq., of Murphy, N. C., having been recalled for further cross-examination, having been duly sworn, said:

Cross-examination by Hon. CHARLES T. CATES, Jr., Attorney General, on behalf of the defendant, State of Tennessee:

X 1. You are the same John R. McClellan who was examined as a witness for North Carolina at Murphy on the 10th of May, 1911, are you not?

A. Yes sir.

X 2. Now Mr. McClellan, during the course of your examination you were asked about coming to Knoxville, Tennessee, sometime last Winter upon a summons of the Attorney General of Tennessee, but you were discharged by him and notified that you would not

865 be examined as a witness by Tennessee. You remember that testimony?

A. I don't recollect whether they asked me anything about that or not, but I was not examined here.

X 3. Is it not a fact, Mr. McClellan, that when you came here Charles T. Cates, Jr., the Attorney General of Tennessee, interviewed you with respect to whether you had in your possession a copy of the report of the survey which you made for North Carolina in about the year 1893?

A. I don't recollect whether he asked me that or not, but I didn't have a copy.

X 4. Do you not recollect that he stated to you specifically that he wanted your testimony supported by that report that you had made to the Secretary of State of North Carolina?

A. No, I don't recollect any such conversation as that.

X 5. Do you not recollect that he released you as a witness when you told him that you didn't have a copy of that report in your possession?

A. I don't recollect why he released me—I don't know why he released me.

X 6. Do you not recollect anything at all about the conversation between you and the Attorney General of Tennessee in respect of that report?

A. He might have asked me, I don't recollect.

X 7. You did tell him you recollected that you didn't have a copy of that report, do you not?

A. I don't recollect whether I did or not. I did not have a copy for ten years.

X 8. That report of your acts and doings as a surveyor in running that line from the Unaka Turnpike to the Tennessee river was made in writing and filed with the Secretary of State of North Carolina, wasn't it?

A. Yes sir.

X 9. And still you haven't a copy of that report?

A. No sir; but it burned about ten years ago.

X 10. You mean the copy you kept was burned about ten years ago?

A. Yes sir.

X 11. Now as I understood your statements in your orig-
866 inal examination you commenced at a point on the Turnpike that is undisputed as being on the State line and is commonly known as the 101 mile tree?

A. Yes sir.

X 12. The 101 mile—that is right?

A. Yes sir.

X 13. Now what did you put up at that place?

A. A stone.

X 14. And what did that stone have on it?

A. 101.

X 15. Just had on it 101 and then 0?

A. Yes sir.

X 16. What did that 101 signify?

A. 101 miles from the Catalouchee Turnpike

X 17. You just assumed that to be 101 miles from the Catalouchee Turnpike?

A. Yes sir.

X 18. You never made a survey of that line from the Catalouchee Turnpike?

A. No sir.

X 19. Then you run back Northeasterly along the top of the mountain crest, of the mountain, did you not?

A. Yes sir.

X 20. And at the end of the first mile, from this 101-0 mile stone, what did you erect?

A. A stone.

X 21. What did you put on it?

A. 101.

X 22. Let me see if I catch it—you put at the end of the 101 mile from the beginning a stone bearing the inscription cut into it 100 and then a dash and then a 1?

A. Yes sir.

X 23. And at the end of the second mile, what did you erect?

A. A stone.

X 24. What did you cut on that stone?

A. 99 and 2.

867 X 25. Then at the end of the third mile, what did you cut?

A. 98-3.

X 26. At the end of the fourth mile, what did you cut?

A. 97-4.

X 27. At the end of the fifth mile did you also erect a stone?

A. Yes sir.

X 28. And what did you cut on the stone?

A. 96 & 5.

X 29. Now then Mr. McClellan, at the end of the 15th mile from your beginning point, what did you erect?

A. A mile stone.

X 30. And what did you cut on that?

A. 86 and 15.

X 31. 86 and 15?

A. Yes sir.

X 32. Now you run that mountain—the crest of the mountain—from your beginning at the 101 & 0 to where you erected the rock at the end of the fifteenth mile and on which rock you inscribed 86 & 15?

A. I don't know whether that was on the top of the mountain or not?

X 33. Did you not run from the crest of the mountain from 101-0, your beginning point, to where you erected the fifteenth mile stone?

A. I don't know whether the 15 was on the top of the mountain or not, it was on top of the ridge that run to the Tellico river.

X 34. Now you- report would have shown that?

A. Yes sir.

X 35. Your report in writing would show where you erected every one of those rocks, wouldn't it?

A. I don't think it did.

X 36. You have just stated it would show where you erected the 15th mile tree or stone?

A. Only the principal points were mentioned in the report, the principal crossings and a certain number of miles from one point to another and a mile stone was erected at each mile.

868 X 37. How long have you been a surveyor Mr. McClellan?

A. 25 years.

X 38. And isn't it your habit in making a report of your work of that character to so describe it that the description will aid the courses and distances called for in the report?

A. I always file the field notes and they could check them and find anything I had done.

X 39. You mentioned in these reports the location of these mile stones?

A. Yes sir.

X 40. And the strong probabilities are that you stated in the report the exact points, or at least the description of the points, where you erected them?

A. No sir.

X 41. Then you would say in the report after giving certain courses and distances fifteen miles where I erected a stone?

A. No, I would cross Laurel Top at so many miles, Tellico river at so many miles in the report.

X 42. Didn't you make any reference in the report to these mile stones that you erected?

A. Nothing, only that a mile stone was set up at the end of each mile.

X 43. Now then Mr. McClelland you don't recall you say where that 15 mile stone was erected?

A. No—whether it was on Jenks Ridge or on the main mountain?

X 44. Isn't it a fact that that 15 mile stone, representing the end of the fifteenth mile from your beginning point at 101-0 was up on top of the main mountain?

A. I couldn't say.

X 45. Isn't it a fact that where you erected that mile stone bearing the inscription 86-15 was fully a mile and a half from where you say you found a holly tree bearing the figures 86 on it down near Tellico River?

A. I couldn't say how far, I don't recollect.

X 46. Don't you know that it was as much as a mile and a half?

A. No sir, I don't.

869 X 47. You know it was not down at that tree, don't you?

A. I know it was not near the tree.

X 48. Now Mr. McClellan you also on your examination by Mr. Posey at Murphy attempted to explain the difference in the length of your line as you run it from 101-0 to the Little Tennessee river by saying that that extra length in your line was caused by the route

you run from Big Fodder Stack down the Little Fodder Stack lead to the river, didn't you?

A. Yes sir.

X 49. How many miles were in the line that you run from 101 to the Little Tennessee river?

A. About 40 I think it was.

X 50. What was the last—what was the last inscription on the stone which you erected down near Little—I mean near the Little Tennessee river near Little Fodder Stack lead the one nearest the river?

A. I believe it was 82-39.

X 51. 62-39 wasn't it?

A. Yes sir.

X 52. Now how far from the river was that stone?

A. I don't know, I wasn't down at the stone.

X 53. Now how much longer is the route from the Big Fodder Stack around to the river by the Little Fodder Stack lead than it is from Big Fodder Stack down that present contention of North Carolina to Slick Rock Creek and thence down Slick Rock creek to the river?

A. About three miles.

X 54. And so that is how you account for the increased distance of your line over your line now claimed by North Carolina?

A. Yes sir.

X 55. So if it is a fact Mr. McClellan that the rock which you erected at the end of the fifteenth mile from the Unaka Turnpike—the rock bearing the inscription 86-15—is a mile and a half from that so-called 86 Holly tree, why right there you had a mile and a half more than is in the line called for by North Carolina, didn't you?

A. Yes, I guess that far if it would be.

870 X 56. Then the three miles around from Big Fodder Stack by Little Fodder Stack to the river wouldn't be accounted for solely by the difference between that distance and the distance down Slick Rock Creek would it?

A. There would be that much difference in it, don't make any difference how you would account for it.

X 57. Well you have said that 86-15 mile stone was some little distance from the 86 Holly tree—how far do you estimate it to be—now just merely from recollection?

A. I don't recollect. It has been 18 years since I have been there and I have never thought any more about it since then.

X 58. Now you said a while ago that you didn't know whether the mile stone 86-15 was on Jenks Ridge or main mountain, did you not?

A. Yes, sir.

X 59. Now what do you mean by "main mountain"?

A. The Jenks mountain.

X 60. The Unaka mountain?

A. Yes sir.

X 61. Now the Jenks ridge is a spur running from the Unaka mountain down in the direction of Tellico river, isn't it?

A. Yes sir.

X 62. But the main ridge of the mountain as you come up from the Unaka Turnpike at the 101 mile tree or circle runs right on by Jenks Knob in a Northeasterly direction, don't it—the main mountain does?

A. Nearly in an easterly direction.

X 63. And runs right on by there by Jenks Knob to McDaniel Bald?

A. Yes sir.

X 64. The main mountain runs around the head waters of Tellico river—no doubt about that?

A. That is the divide.

X 65. And the main mountain isn't it?

A. Yes sir.

X 66. Now about how far according to your recollection is that alleged 86 Holly tree from the Tellico river?

871 A. Five or six hundred feet.

X 67. And right down nearly at the foot of Jenks Ridge isn't it?

A. Yes sir nearly at the foot.

X 68. Now how far is it from that Holly tree up to the top of the main mountain Southwesterly?

A. It is something over a mile.

X 69. Something over a mile?

A. Yes sir.

X 70. You were asked by counsel for North Carolina at Murphy about your attendance here as a witness and released by the Attorney General of Tennessee—how many times were you summoned by North Carolina to testify in her behalf?

A. Once before this I believe.

X 71. Whereabouts?

A. It was here I believe.

X 72. I understand—but weren't you summoned to come to Asheville at any time?

A. Yes sir, but I don't recollect who by.

X 73. Did you go to Asheville?

A. Yes sir.

X 74. You conferred there with counsel for North Carolina?

A. Yes sir.

X 75. And they sent you back without examining you, didn't they?

A. Yes sir, I believe they did.

X 76. Now didn't you also attend at the first taking of depositions at Murphy in about June 1910, when Gen. Bickett and Gen. David son or Mr. Sondley or somebody else was there taking depositions?

A. Yes sir.

X 77. You attended there as a witness?

A. Yes sir.

X 78. And you were not summoned—I mean you were not examined by North Carolina were you at that time?

872 A. I don't believe I was.

X 79. You were notified by Mr. Ben Posey recently that you were wanted back here for further cross-examination, wasn't you?

A. Yes sir.

X 80. Did Mr. Posey show you the letter which he received from the Attorney General of Tennessee in regard to that matter?

A. Yes sir.

X 81. He showed you that letter didn't he?

A. Yes sir.

X 82. Isn't this (handing witness a carbon copy of a letter) a copy of it?

A. Yes sir.

X 83. That letter which Mr. Posey showed you, of which this was a copy, was signed by Charles T. Cates, Jr., Attorney General of Tennessee, wasn't it?

A. I don't recollect who it was signed it.

X 84. Didn't you understand from Mr. Posey that it was from the Attorney General of Tennessee?

A. I told him he need not show me any more letters that I wouldn't come.

X 85. He showed you a letter?

A. Yes sir.

Gen. CATES: I will ask that this copy be made Exhibit "A" to your deposition?

Mr. SONDLEY: State of North Carolina objects to the presentment of the paper at this time because it is making evidence for the State of Tennessee itself and it is incompetent and if it is making testimony in regard to the writing of the letter, it can only be made in the usual way.

Gen. CATES: Subject to the exception Mr. McClellan, I will ask you to make this letter Exhibit "A" to your deposition?

The WITNESS: I will do so.

873 EXHIBIT "A" TO DEPOSITION OF JOHN R. MCCLELLAN.

KNOXVILLE, TENN., *August 22nd*, 1911.

Hon. Ben Posey, Attorney at Law, Murphy, N. C.

MY DEAR SIR: I take it that you have been advised that we will resume taking proof here in the State boundary line case on Monday, August 28th, and I want you to bring with you Mr. McClellan for the reason that I want to cross-examine him a little further in order to show precisely why I did not examine him upon his former attendance at Knoxville under the arrangement I made with you. I am thus frank in stating to you my reason because both you and McClellan know that I did not examine him for the reason that he did not have and could not furnish me the copy of the report made by him to the State of North Carolina covering the survey

made as the agent and under the authority of the State. Please say to McClellan that if he does not come, it will compel me to have a subpœna served upon him. I can examine him in a few minutes and let him return the same day.

Very truly yours,

——— ———,
Attorney General.

874 NOTICE TO NORTH CAROLINA.—Tennessee by her Attorney General here and now again gives notice to North Carolina to produce the report or survey made by the witness John R. McClellan to the State of North Carolina and filed in the office of the Secretary of State of North Carolina.

Gen. BICKETT: We have had diligent search made by the Secretary of State and by my assistant and I think Gen. Davidson himself and we have been unable to find this report.

X 86. Mr. McClellan, you have just been attempting to describe that report made by you to Gen. Bickett—describe it in your own way so that we can put it in this record.

A. I was describing the field notes.

X 87. Describe the field notes—in what were they contained?

A. Transit book.

X 88. How large was the transit book?

A. About five inches wide.

X 89. And how long?

A. About seven inches long.

X 90. How thick?

A. About an inch thick.

X 91. What kind of covers did it have on it?

A. It is hardly a leather cover, pretty good covers, but yellow back.

X 92. What did you express on it "Survey of field notes made by you for North Carolina"?

A. I don't think there is anything on it.

X 93. Nothing on it to identify it as your field notes?

A. I don't think there is.

X 94. Did those field notes accompany your written report?

A. Yes sir.

875 Redirect examination on behalf of complainant, State of North Carolina, by Mr. SONDLEY:

R. D. 1. You say, Mr. McClellan, that you were subpœnaed at one time to come to Asheville to be examined on behalf of the State of North Carolina. Is that correct?

A. Yes sir.

R. D. 2. Don't you remember that you arrived too late to be examined at that time and you were told that you would be examined on a future occasion at another stage of the case?

A. I don't recollect what was told me. I know I was not in town.

R. D. 3. You were not told that you would not be examined?

A. No sir.

R. D. 4. But only that you would not be examined at that time—is that it?

A. Yes sir.

R. D. 5. Who did examine you finally—the State of North Carolina put you on the stand, or the State of Tennessee?

A. I don't know which it was. It was before a commissioner up there at Murphy.

R. D. 6. Who first questioned you on that examination?

A. I don't know whether it was Mr. Posey or Mr. McCroskey, both trying to talk a lot.

R. D. 8. That was the time—you were talking of last—whereabouts was that?

A. Murphy.

R. D. 9. North Carolina?

A. Yes sir.

R. D. 10. When?

A. About a year ago or a little over, I think.

R. D. 11. You remember any effort made to get you to Asheville on the part of North Carolina on another occasion when you couldn't come?

A. Yes sir.

R. D. 12. For what purpose did they want you that time?

A. I don't know.

876 R. D. 13. Did they tell you whether they wanted to examine you or not?

A. They didn't say—said they wanted me to come in the State Line case.

R. D. 14. Now you say when you were at Knoxville you were not examined and you don't remember what reason was assigned—were you in the room when the testimony was being taken when the announcement was made that you would not be examined on that occasion?

A. No sir.

R. D. 15. You were not in the room?

A. No sir.

R. D. 16. You spoke of having at one time or another of having made some survey of this line that is now in dispute between North Carolina and Tennessee—how long ago was that?

A. 18 years.

R. D. 17. What did you have to guide you in making that survey?

A. A code of North Carolina.

R. D. 18. A code?

A. Yes sir.

R. D. 19. Presume you mean that part of it which contained the Cession Act of North Carolina by which North Carolina ceded to Tennessee certain territory?

A. Yes sir.

R. D. 20. Did you have with you the map which has since been found among the archives of the State of Tennessee?

A. No sir.

R. D. 21. Did you have with you the Davenport field notes at that time?

A. No sir.

R. D. 22. Had you at that time ever seen the marks of the trees up Slick Rock Creek?

A. No sir.

R. D. 23. Have you seen any of those trees since—any of them?

A. Yes sir.

R. D. 24. What were the marks on those trees up Slick Rock Creek?

A. State Line marks.

877 R. D. 25. If you had had the Davenport field notes and the map that has been discovered in the archives of Tennessee and had known of these marked trees, would that in any way have effected your work?

A. Yes, I would have investigated what they had done.

R. D. 26. You have seen these things since, have you, that map that I spoke of and the Davenport field notes and you also as you say have seen these trees up Slick Rock Creek marked as State line trees, would that have varied your work in any respect than you did it?

A. Yes sir.

R. D. 27. In what way would that have varied your work?

A. Went down Slick Rock instead of Folder Creek lead.

R. D. 28. You were asked about the main mountain at the neighborhood of Tellico—which way did you survey?

A. Northeast.

R. D. 29. Did you or not cross Tellico?

A. Yes sir crossed it.

R. D. 30. Was that 86 mile tree as it is termed that you spoke of having seen, the Holly, then seen by you?

A. Yes sir.

R. D. 31. What had it on it then?

A. 86-M.

R. D. 32. How distinct was that?

A. Plain.

R. D. 33. Was that on or not on the line you run?

A. Yes, it was on the line I run.

R. D. 34. Why did you do down Jenks Ridge when you came to that instead of going around the head of Tellico?

A. Because that 86 mile tree was on it.

R. D. 35. Did you find any marked trees after you got to Jenks Knob between that and the tree marked 86-M, the Holly?

A. No sir.

R. D. 36. After you passed Tellico going up State Ridge, did you see any marked trees on that?

878 A. Yes sir.

R. D. 37. What were the marks?

A. State Line marks.

R. D. 38. How old were they in general appearance?

A. Very old.

R. D. 39. Did they appear to be old enough for the Cession Act which you were using for the survey of 1820, or any where along there?

A. Yes sir, they had that appearance.

R. D. 40. Now when you reached Jenks Knob you spoke of the main mountain, or rather you answered a question about main mountain as assenting to that, but you described it as the main mountain around, the dividing mountain?

A. Dividing the waters.

R. D. 41. Could you call that any more the main mountain than the State Line ridge?

A. Well it is not as high as the State Ridge is; at points the State Ridge is cut in two and it is not as high is the only difference I saw in it.

R. D. 42. One crosses Tellico river and the other goes around the head?

A. Yes sir.

R. D. 43. So that is the only reason you spoke of the one going around the head, or assented to it as the main mountain?

A. Yes sir.

R. D. 44. Now you say that you found that tree, marked 86 M., when you were making that survey, but that your own measurement in going backward had put you some distance from it. Did you ever try to reverse that from Tennessee river and find where that would put you?

A. No sir.

R. D. 45. You don't know whether that would make it correct or not?

A. No sir.

R. D. 46. In those old surveys is there probability that *outs* had been lost or errors made in that way?

A. Yes sir.

879 R. D. 47. From your experience as a surveyor and the indications that you saw on the ground at the various times you have been there coupled with the documents that you have seen in regard to the matter, where would you say that the State Line is located in the neighborhood of the Tennessee river?

A. Down Slick Rock Creek.

R. D. 48. Then going by way of what mountain or peak next that you can remember?

A. Fodder Stack.

R. D. 49. When you speak of Fodder Stack which do you mean—the Big or the Little?

A. Big Fodder Stack.

R. D. 50. What would you say in regard to where the State Line was run in 1820 using this data in the neighborhood of Tellico river?

A. Down the State Ridge.

R. D. 51. And how after it crossed Tellico—up what?

A. Jenks Ridge.

R. D. 52. Now you spoke of having made a report to the Secretary

of the State of North Carolina in writing. How long ago was that report made?

A. 18 years ago.

R. D. 53. How did you transmit it to the Secretary of State?

A. By express.

R. D. 54. Have you ever seen that report since that time, the original?

A. No sir.

R. D. 55. You said your own copy that you retained had been lost by burning?

A. Yes sir.

R. D. 56. Have you any other copy?

A. No sir.

R. D. 57. Have you ever seen any other copy than that?

A. No sir, don't think I have.

R. D. 58. You remember a litigation of Stevenson against Fain some years ago?

A. I don't recollect who it was; they had some little litigation some way.

880 R. D. 59. You remember a litigation some years ago that involved the State Line in the Tellico neighborhood?

A. Yes sir.

R. D. 60. Was any of the Fain family interested in that?

A. They were all interested in it I suppose.

R. D. 61. Did you have anything to do with that as surveyor?

A. With that law suit?

R. D. 62. Yes sir.

A. No, I didn't have with that suit.

R. D. 63. Have you made any other survey in that neighborhood beside the one you testified to you made 18 years ago as to where the State Line is?

A. Yes sir.

R. D. 64. When did you make surveys through there at a different period?

A. I have been there on five or six different occasions since then.

R. D. 65. Surveying?

A. Yes sir.

R. D. 66. And did that involve your passing over that State Line at that part of it?

A. Yes sir.

R. D. 67. Where did you locate it every time—around the head of the Tellico or across the Tellico by way of State Ridge and Jenks Ridge—which?

A. Across the State Ridge.

R. D. 68. I believe you said that by the survey you made in going down to the Tennessee River by way of Little Fodder Stack you found that you had made the distance three miles too great?

A. Yes sir; I don't recollect—something over three miles.

R. D. 69. Suppose you had gone around the head of Tellico instead of across there would that have decreased that discrepancy or added to it?

A. Added to it six miles.
R. D. 70. Making nine in all?
A. Yes sir.

R. D. 71. Now I want to know if you know whether or not
881 you had gone across the Tellico and across up the State ridge as you did and then gone up Big Fodder Stack and to Slick Rock and then down the river would that have changed your measurement and, if so, how much?
A. It would have shortened it.
R. D. 72. How much?
A. Three miles.
R. D. 73. Would that correspond with the distance you understood through there still?
A. Been a little wrong still.
R. D. 74. How much?
A. Something like a mile.
R. D. 75. You say that when you came here once to testify you were not examined—at whose instance did you come then?
A. I don't know whether it was Tennessee or North Carolina.
R. D. 76. What individual?
A. Mr. Posey.
R. D. 77. Did he ask you to come?
A. No, I don't know whether it was on his say so, but he had a letter from some party that wanted me to come.
R. D. 78. Did he present the letter?
A. Yes sir.
R. D. 79. Did you come in consequence of that letter?
A. Yes sir.
R. D. 80. What Posey was that?
A. Ben Posey.
R. D. 81. When you came this time, who communicated the information that you were wanted here this time?
A. The same man.
R. D. 82. Did you come willingly these times or reluctantly?
A. I didn't want to come either time.
R. D. 83. Why not?
A. I didn't want to lose the time.

R. D. 84. Did the State of North Carolina or anybody rep-
882 resenting her suggest that you should not come?
A. No sir.

Q. 85. What overcome your reluctance or induced you to come the two times?
A. I knew if they wanted me they would get me and I would have to come on.

Recross-examination by Gen. CHARLES T. CATES, JR., Attorney General, on behalf of the defendant, State of Tennessee:

R. C. 95. Now Mr. McClellan, you came this time under subpœna?
A. Yes sir.
R. C. 96. When Mr. Posey, who has been one of the counsel for

North Carolina showed you my letter requesting you to return here you declined, or rather you declared you would not come here unless you were subpœnaed?

A. Yes sir.

R. C. 97. Thereupon a subpœna was issued and you accepted the subpœna and came under the subpœna?

A. Yes sir.

R. C. 98. Now I want to ask if you knew a man who formerly lived in North Carolina by the name of Messer Fain?

A. Yes sir.

R. C. 99. Was his name "Messer"?

A. "Mercer."

R. C. 100. "Mercer Fain"

A. Yes sir.

R. C. 101. Is he living or dead?

A. He is dead.

R. C. 102. When did he die?

A. I expect it has been 12 or 15 years ago.

R. C. 103. Was he related to Jasper Fain?

A. Yes sir.

883 R. C. 104. What relation to Jasper Fain?

A. Father.

R. C. 105. Where did Mercer Fain live?

A. At Murphy.

R. C. 106. In what county?

A. Cherokee.

R. C. 107. In Murphy, Cherokee County, North Carolina?

A. Yes sir.

R. C. 108. Did he have some connection with the railroad formerly over there, some little line of railroad?

A. Marietta & North Georgia—L. & N. now.

R. C. 109. Didn't he have some connection with a little railroad running from Murphy up into the mountains?

A. Not that I know of.

R. C. 110. Or some of those purchases that has since become a part of the Southern Railroad system?

A. Yes sir.

R. C. 111. Which one of the lines that is now a part of the Southern system was it?

A. Red Marble Gap.

R. C. 112. He claimed to own a great deal of land in Cherokee County?

A. Yes sir.

R. C. 113. He was a very old man when he died?

A. Yes sir.

R. C. 114. Had lived in Cherokee County all his life?

A. I don't know.

R. C. 115. How old are you, Mr. McClelland?

A. I will be 48 in ten days.

R. C. 116. How long had you known Mercer Fain?

A. I know he moved from Georgia there when I was about 10 or 12 years old.

R. C. 117. So he had lived in Murphy a considerable time before his death?

884 A. Yes sir.

R. C. 118. And was one of the largest land owners in Cherokee County?

A. Yes sir.

R. C. 119. And man of affairs?

A. Yes sir.

R. C. 120. You say he is the father of Jasper Fain?

A. Yes sir.

R. C. 121. Is that the same Jasper Fain who laid claim to a boundary of land up there near the States and up near State Ridge?

A. Yes sir.

R. C. 122. And is he the same Jasper Fain who went with you on the survey that you made?

A. Yes sir.

R. C. 123. Now Mr. McClellan you have stated in response to a question by Mr. Sondley that when you went in there to run that line as the agent of North Carolina that you run it by the calls contained in the Code of North Carolina. Is that right?

A. Yes sir.

R. C. 124. The description of the line contained in the Code of North Carolina?

A. Yes sir.

R. C. 125. Do you mean the Cession Act or the Act confirming the report of the survey of 1821?

A. The Act containing—I mean the Act confirming the report of 1821.

R. C. 126. Now you also stated that when you came to Jenks Ridge in running the crest of the mountain Northeasterly from the 101 mile tree or alleged mile tree that you run down Jenks Ridge because you knew that Holly was down there?

A. Yes sir.

R. C. 127. Now who had told you before that about the Holly?

A. I have heard of it ever since I was a little boy.

R. C. 128. The reason you run down Jenks Ridge because

885 you understood there was a Holly down there?

A. I went down there and seen it myself.

R. C. 129. And you had never seen it before then?

A. No sir.

R. C. 130. And Jasper Fain told you about it?

A. Yes sir.

R. C. 131. And if you had not understood about that Holly being down there, in running the calls of the Cession Act and also the Act confirming the report of 1821 you would have stayed on top of the ridge of the main mountain, would — not?

A. Yes sir.

R. C. 132. And gone Easterly by way of Rocky Knob and McDaniel Bald?

A. Yes sir.

R. C. 133. And because those peaks are on the main mountain?

A. Yes sir, the dividing waters.

R. C. 134. Now you stated a while ago that State Ridge is higher than the mountains around the head waters of Tellico River?

A. Yes it is higher.

R. C. 135. Higher than Rocky Knob?

A. Yes sir.

R. C. 136. Higher than McDaniel Bald?

A. Yes sir, down where it breaks off to the river.

R. C. 137. That is your estimate of it?

A. Yes sir I know it to be for we had a level on it.

R. C. 138. Then if the Government topographers and surveyors give a greater altitude to Rocky Knob and McDaniel Bald than State Ridge they are in error, are they?

A. Yes sir.

R. C. 139. Now in giving your reasons to Mr. Sondley as to why you called this ridge around the head waters of Tellico and upon which Rocky Knob and McDaniel Bald are situated as the main ridge it is an unbroken ridge all around there—that is a fact, is it?

886 A. It is not broken.

R. C. 140. But no water way through it—no water way runs through it, East or West—that is a fact?

A. Yes sir.

R. C. 141. While State Ridge loses itself down near Tellico river on the Northeast side, and Jenks Ridge loses itself down near the Tellico river on the Southwest side—that is a fact, is it?

A. Yes sir.

R. C. 142. Now I believe you said you didn't find a marked tree between the main ridge of the mountain running down Jenks Ridge to that Holly tree, didn't you?

A. No, not until I got to the Holly.

R. C. 143. You say that it had the appearance of an old mark?

A. Yes sir.

R. C. 144. You know as a woodsman, Mr. McClellan, that it is not a very hard thing by burning and making marks on a tree to make them have the appearance of an old mark?

A. Yes sir, they can burn them.

R. C. 145. And that particular tree can't be blocked out to ascertain how old those marks are, can they?

A. No sir.

R. C. 146. Mr. McClellan, is there present participating in this examination Mr. Hopkins of Ohio—isn't that Mr. Hopkins sitting right there to your right?

A. I don't know.

R. C. 147. Been conferring with you since you have been on the stand?

A. No, just talking.

R. C. 148. Now you have been asked about the case of Stevenson

against Fain, you say you don't know whether you were examined in that case?

A. I don't think I was.

887 Redirect examination by Mr. SONDLEY on behalf of the complainant, State of North Carolina:

R. D. 86. About that subpœna matter—you say you were subpœnaed to come over here?

A. This time.

R. D. 87. Who caused you to be subpœnaed—in behalf of whom were you subpœnaed?

A. I don't know. I have got this paper signed by Mr. Edmund B. Norvell, Special Commissioner.

R. D. 88. It appears though it was issued on behalf—it don't say on behalf of whom you were summoned?

A. No sir.

R. D. 89. And it says you were to testify before the Supreme Court on the 5th day of September, 1911?

A. Pending in Supreme Court of the United States.

R. D. 90. Don't it say you are to be examined before the Supreme Court at Knoxville and the State of Tennessee?

A. Yes sir.

R. D. 91. You don't know who issued that subpœna, or in whose behalf it was issued—whether North Carolina or Tennessee?

A. No sir.

R. D. 92. Well you said in answer to questions on your re-cross examination that you were told before you went to the Holly Tree, marked 86-M that it was there?

A. Yes sir.

R. D. 93. How long had you known of that Holly tree marked 86-M prior to that time?

A. I have heard of it ever since I can recollect.

R. D. 94. As what?

A. As a holly tree on the State Line.

R. D. 95. And how old did you say you are?

888 A. Be 48 in about a week.

R. D. 96. Can you remember any of the people who told you that Holly tree was down there and was a line tree in the line between North Carolina and Tennessee?

A. Mercer Fain and Dr. J. W. Patton and several others.

R. D. 97. Give the names slowly please,—Mercer Fain and Dr. J. W. Patton and who else now, please?

A. A man by the name of Dockery, I forget his given name.

R. D. 98. When did Mercer Fain tell you about that?

A. Why I have heard him talk of it ever since he moved there.

R. D. 99. Ever since he came to North Carolina?

A. Yes sir.

R. D. 100. That is the Holly tree you spoke of in your re-cross examination?

A. Yes sir.

R. D. 101. Who was J. W. Patton?
A. Dr. J. W. Patton is all I know.
R. D. 102. Where did he live?
A. At Murphy.
R. D. 103. Where is he now?
A. Dead.
R. D. 104. Was he an old man or young man?
A. An old man.
R. D. 105. What knowledge had he of the country about Murphy and the surrounding country?
A. I don't know how long he lived there, he was living there when I first knew him up to his death.
R. D. 106. Who was this man Dockery that told you?
A. He was an old man that lived there.
R. D. 107. Where is he now?
A. He is dead.
R. D. 108. How long has he been dead?
A. 8 or 10 years.
889 R. D. 109. When did he tell you about it?
A. On different occasions, asked him about it.
R. D. 110. It seems that Holly tree has some general reputation in the country over there as being on the State Line, has it?
A. Yes sir.
R. D. 111. Well when you went to it did you examine it—18 years ago?
A. Yes sir.
R. D. 112. Suppose it had been burned in any way prior to that time would you have been able to tell it?
A. I can't say—it didn't show any appearance of burning.
R. D. 113. Was the appearance of age that you saw on it that of burning, or that of age by expiration of time and exposure?
A. Looked to be by expiration of time, exposure.
R. D. 114. Now you said that you would have if you had not known anything of the Holly that you would have run around the head of Tellico?
A. Because that divides the waters.
R. D. 115. You would have been guided entirely by the question of divide?
A. Yes sir.
R. D. 116. Was there anything else except the question of divide that lead you to go around that way? Ever see any State Line trees around that part of the Tellico?
A. No sir.
R. D. 117. Ever look for any?
A. Yes sir.
R. D. 118. How much have you looked?
A. All the way around.
R. D. 119. When?
A. When I run the State Line.
R. D. 120. How carefully did you look?
A. Very carefully.

R. D. 121. If there had been any there would you have seen them?

A. Yes, sir.

890 R. D. 122. What is the distance around Jenks Ridge by way of Tellico where the ridges join at the head of State Ridge?

A. About 12 miles.

R. D. 123. Did you find a single tree marked as a State Line tree in that distance?

A. No sir.

R. D. 124. How long has Mercer Fain been dead?

A. He has been dead 12 or 15 years.

R. D. 125. When was the first time that you ever learned that there were trees bearing a State Line mark up Slick Rock Creek?

A. 10 or 12 years ago.

R. D. 126. Since your survey?

A. Yes sir.

R. D. 127. Now when you were going from the State Ridge Northeasterly in making that survey about 18 years ago, how did you come to go by way of Big Fodder Stack instead of taking the Hangover Ridge?

A. I found marks on Fodder Stack lead but found none on the other.

R. D. 128. Did you examine Hangover lead to see whether there were any marks there?

A. Yes sir.

R. D. 129. What marks did you find, if any?

A. Didn't find any marks at all by way of Hangover lead.

R. D. 130. Did you make any examination at all by way of Big Fodder Stack?

A. Yes sir.

R. D. 131. Did you find any there?

A. Yes sir.

R. D. 132. What was their character and appearance of age?

A. Old and State Linemarks.

R. D. 133. Where did you find those marks?

A. On Big Fodder Stack.

R. D. 134. Did you find any on Little Fodder Stack after going off the Big Fodder Stack?

A. No sir.

891 Recross-examination by Gen. CHARLES T. CATES, JR., on behalf of the defendant, State of Tennessee:

R. C. 149. You were asked about why you went down Fodder Stack lead instead of going down the Hangover lead and you say you found some marked trees down on the Big Fodder Stack ridge?

A. Yes sir.

R. C. 150. Who was with you to point out the way down there?

A. Nobody.

R. C. 151. Were you by yourself?

A. Yes sir; I had a party with me.

R. C. 152. Was Jasper Fain with you?

A. No sir.

R. C. 153. After you reached the Big Fodder Stack you went down to the river by way of Little Fodder Stack lead you found marked trees on it?

A. No sir.

R. C. 154. Why did you go around the Little Fodder Stack lead to the river?

A. I supposed they followed one lead to the other from the Code.

R. C. 155. The fact is that North Carolina at that time was claiming the line from Little Fodder Stack to the river?

A. I don't know.

R. C. 156. Then your judgment from the calls of the Cession Act and the North Carolina Act confirming the report of 1821 was that it went down to the river on a ridge?

A. Yes sir.

R. *D.* 157. Went down to the river on some ridge and you selected the Little Fodder Stack?

A. I went down it because I found marks on that divide.

R. C. 158. And found marks all the way down to the river?

A. No sir not after passing Big Fodder Stack.

R. C. 159. Why then did you go from Big Fodder Stack to the Little Fodder Stack?

892 A. All of the same lead.

R. C. 160. And a continuous lead from Big Fodder Stack to the Junction?

A. Yes sir.

R. C. 161. If you followed from the Junction the extreme height of the mountain to the river, you would have gone by way of Stratton Bald and McDaniel Bald to the river?

A. Yes sir; it is higher at some points.

R. C. 162. That is the main junction from Big Fodder Stack by way of Stratton Bald and McDaniel Bald to the river?

A. Yes sir.

R. C. 163. It is by way of Hangover and the Cold Spring Gap?

A. I don't know where that is.

R. C. 164. You say you don't know where Cold Spring Gap is?

A. Not that I ever heard of.

R. C. 165. Have you ever been on the North side of the river where that marked fore and aft tree is?

A. No sir.

Re-examination by Mr. SONDLEY on behalf of the complainant, State of North Carolina:

R. D. 135. Now that main lead of Hangover—doesn't the main lead go by way of Cheoah river above its mouth 8 or 10 miles?

A. It is a little higher ridge than the other but it is a continuous ridge.

R. D. 136. And you say that the Hangover is higher in some places than at other places and while the other is higher at some places than Hangover it might be called the main ridge in some places?

A. Yes sir.

R. D. 137. And that might be true of the Big Fodder Stack in some places too, isn't that so?

A. Yes sir.

R. D. 138. So there is nothing that would characterize one
893 specifically as the main ridge, but only sometimes one is higher than the other?

A. Yes sir.

R. D. 139. And sometimes they are the other way?

A. Yes sir.

Recross-examination by Gen. CHARLES T. CATES, JR., on behalf of the defendant, State of Tennessee:

R. C. 166. Do you mean to say that the Big Fodder Stack ridge and the Big Fodder Stack peak is higher than Stratton Bald and McDaniel Bald?

A. No sir.

R. C. 167. And it is not as high as the lead that runs from the Junction to Hangover by several hundred feet. I mean the Big Fodder Stack lead and Big Fodder Stack isn't as high as the lead running to Hangover by several hundred feet?

A. No sir.

R. C. 168. How far is it from Junction to Hangover?

A. About three miles.

R. C. 169. Now I will ask you about this subpœna issued by Mr. Norvell, Special Examiner, and service of which is accepted by you, and will ask you to make the same Exhibit "B" to your deposition?

A. I do so.

And further this deponent saith not.

JOHN R. McCLELLAN.
By WM. MEYERHOFF.
Stenographer.

Sworn to before me on September 5th, 1911.

S. E. CLEAGE.
Supreme Court Clerk.

894 EXHIBIT "B" TO DEPOSITION OF JOHN R. McCLELLAN.

UNITED STATES OF AMERICA:

In the Supreme Court.

THE STATE OF NORTH CAROLINA, Petitioner,
vs.
THE STATE OF TENNESSEE, Respondent.

The United States of America to the Marshal or any Deputy Marshal for the Western District of North Carolina, Greeting:

You are hereby commanded to summons John R. McLelland to be and appear at the courthouse in the Supreme Court room in the

City of Knoxville, State of Tennessee, before the Supreme Court on the 5th day of September, 1911, for further examination in the case of the State of North Carolina against the State of Tennessee pending in Supreme Court of United States. Hereof fail not and of this precept make due return.

Witness my hand, this 2nd day of September, 1911.

EDMUND B. NORVELL,
Special Examiner.

(Endorsed:) The State of North Carolina vs. The State of Tennessee. Subpœna for J. R. McClellan. I accept legal service the within subpœna this Sept. 2nd, 1911. J. R. McClelland. Ex *b* to John R. McClellan.

895 In the Supreme Court of the United States.

STATE OF NORTH CAROLINA
vs.
STATE OF TENNESSEE.

On this, the 18th. day of April, 1911, upon pursuance of a notice heretofore given and served, the State of North Carolina proceeded to take the depositions of the following named witnesses, W. D. Jones, * * * at the Court House in the town of Lenoir, County of Caldwell, and State of North Carolina, the witnesses, before their depositions being delivered, having been duly sworn by J. H. Beall, Commissioner and Notary Public, before whom these depositions were taken.

The State of North Carolina was represented by Hon. T. W. Bickett, Attorney General of said State, and by Messrs. Theo. Davidson and F. A. Sondley and Hon. W. B. Councill, counsel, and the State of Tennessee, by the Hon. Charles T. Gates, Jr., Attorney General of the said State, and Mr. T. E. H. McCroskey, counsel.

W. D. JONES, a citizen of the County of Caldwell aforesaid, having been first duly sworn as aforesaid, and being examined on behalf of the complainant in the above entitled suit by the Attorney General of North Carolina, deposed as follows:

Q. Please give your full name.

A. William Davenport Jones.

Q. What is your age?

A. I was seventy-two the 30th day of last March.

896 Q. Where do you live?

A. In Caldwell County on the Yadkin River. Patterson is my post-office.

Q. State whether or not you were related to William Davenport.

A. I was his grandson on the maternal side.

Q. Do you remember him?

A. Very well.

Q. Where did he live when you knew him?

A. In the house I now live in.

Q. How long have you been living in that house?

A. I think I have been living there ever since the spring of 1865, just after the war.

Q. Now just proceed to tell the circumstances under which you discovered certain field notes of Col. Davenport.

A. I had been requested by one or two parties to look over all the old papers of my grandfather to see if I could find any old papers bearing upon the survey of the line between the State of North Carolina and Tennessee.

(At this point Att'y Gen'l Bickett made the remark—"As I am not very well acquainted with this part of the transaction, Mr. Sondley is asked to continue the examination with reference to this discovery".)

Examination continued by Mr. SONDLEY:

Q. What connection had your grandfather with that survey to which you refer?

A. I have understood, and in fact it was known throughout the whole country, that he was appointed by the Legislature of
897 North Carolina to locate the line between the two States, or rather, survey the line.

Q. When did you first know William Davenport personally?

A. Ever since I was old enough to know anything.

Q. Where did you reside at the time that you first remember to have known your grandfather, William Davenport?

A. My father lived diagonally across the river from him and it was almost an every day business going over there when I was a little fellow.

Q. How far apart were the residences of your father and your grandfather from each other?

A. A short mile.

Q. How intimately associated were you in those days of childhood with your grandfather, William Davenport?

A. I stayed over there a great deal of the time, I was his favorite grandchild and named for him, and he seemed to be very fond of me. I stayed with him probably half of my time when I was just a child old enough to leave home.

Q. Do you know his handwriting?

A. I think so, sir.

Q. How did you acquire familiarity with that handwriting?

A. By seeing a great many papers signed by him, seeing him write, and seeing him sign his name to a great many papers after other people's writing.

Q. Did you do any writing for him at any time?

A. After his wife died; she died two or three years before he did.

Q. Who did the writing for him that he did not do himself before you began to write for him?

898 A. His wife always did his writing for him that I recollect.

Q. Do you know her handwriting?

A. I think so, sir.

Q. How did you acquire a familiarity with her handwriting?

A. By seeing her write; not especially in that way, but by seeing papers that I knew she had written.

Q. When did your grandfather, William Davenport, die?

A. I think it was in 1858.

Q. When did his wife, Mrs. Davenport, die?

A. About 1855 or 1856, about two and a half years, I think, before he died. I am not sure about the exact date.

Q. What age were you at the date of the death of your grandfather, William Davenport?

A. I was born in 1839, and from that to 1858 would make me about nineteen years old.

Q. Did you know anything of the habits of your grandfather, William Davenport, in reference to where he kept his valuable papers and matters of that character?

A. Yes, sir.

Q. How did you acquire that information?

A. By seeing. He had an old desk he always wrote on; called it his secretary; it was a large desk or sideboard and whenever he wanted to write he would go and turn down the lid (it had round hinges) and write on it; he would put the papers all away in that desk when he got through. I never saw him write anywhere else.

Q. Where did he keep his valuable papers?

A. In that old desk there was a large drawer, probably two feet wide and as long as this table, maybe four feet long; that was an outside drawer about twelve or fifteen inches deep and inside
899 of that drawer there was a whole lot of smaller drawers opening out when the desk was turned down; the drawer would open out and he kept all his papers in that.

Q. What became of that writing desk at the time of the death of William Davenport?

A. It remained in the house and is there yet.

Q. How do you know that was the same writing desk?

A. Because I had seen it ever since I was old enough to notice anything.

Q. Is there anything peculiar in its construction and appearance?

A. It is said to have been made by a cabinet maker that stayed in that neighborhood and made furniture for my great grandfathers, Lenoir, Joens and Davenport, out of timber that is said to have been gotten off the land, walnut timber; the timber of the desk was very peculiar in that it was known, as I have been told, as crotch timber—that is, the timber that was taken out of or near the fork of a tree; it gave the grain and looked very much like a weeping willow tree that you have seen hanging down; it was a beautiful piece of timber; the whole outside of the desk was inlaid with holly, a small streak of holly running all around the drawer, making a very beautiful appearance; it is a beautiful piece of furniture.

Q. In 1865 you moved to the house of William Davenport where you have since resided?

A. I think it was 1866.

Q. Into whose possession did that writing desk pass?

A. Mine.
Q. Has it been out of your possession at any time since then.
A. No.
Q. What use did you make of it?
A. It was put in the dining room at home and no particu-
900 lar use made of it except for sitting dishes, ware or something of that sort on it. I think in this big drawer was probably where Mrs. Jones kept tea or something of that sort, and other small things pertaining to the dining room—I don't know what all—not very much of anything else.
Q. What use, if any, did you make of the drawer you speak of as the part that folded down into a writing table?
A. I never used it for anything at all. I had a desk of my own in a different place in my room that I used for putting papers.
Q. Was that part of the furniture which you call the writing desk often opened where the drawers were?
A. No, it was always shut up.
Q. Did you ever open it yourself for anybody else?
A. I don't recollect that I ever did. I sometimes have looked in it.
Q. Now you say that some time ago an application was made to you to search for the notes of the survey, as I understood you, of the boundary line of North Carolina and Tennessee, or its southern portion, made in 1821. Is that a correct statement?
A. I was asked to look for any old papers that would bear upon location of the line between Tennessee and North Carolina. I didn't know whether they wanted field notes, or what they wanted.
Q. When was that request made of you?
A. Two or three weeks ago.
Q. By whom?
A. By Judge Avery.
Q. In behalf of whom?
A. I don't remember. It was made after that by one or two others.
Q. Do you remember who they were?
A. Ned Jones, my nephew, in behalf, I understood it, of Mr.
Shields and others of that Philadelphia Land Company. I
901 think Mr. Shields asked me to search for any papers that would bear upon that subject.

State of Tennessee objects to any statement between the witness and one Ned Jones or Mr. Shields.

Q. What Mr. Shields was that?
A. I have always understood that he was attorney for Yadkin River Land Company.
Q. John Franklin Shields, the gentleman sitting in this room?
A. Yes.
Q. Did you, in consequence of these requests of Judge Avery, Mr. Shields and Ned Jones, make a search for documents bearing on the line between North Carolina and Tennessee?
A. Yes, probably two years ago I made a search for any old

papers that might bear upon the subject at the request of Judge Avery; later on I did make a search (two or three) for any papers of that kind. Afterwards Ned Jones came to my house and I went in there, and in a drawer that I think I must have overlooked before, (a very flat drawer—not much thicker than my hand and probably a foot long and nearly a foot wide), after opening that drawer and after taking one or two papers off the top of it I came across, lying right before my eyes, this little book, marked "Field notes of William Davenport, 1821."

State of Tennessee, by her Attorney General, objects to statement by the witness as to what appeared upon any book or any paper found in that drawer on the ground that the book or paper is the best evidence found there.

Q. What other papers, if any, did you find in that writing desk?

A. I found five hundred, I suppose, in it; all kinds, I reckon; among other things was a proclamation by President Jack-
902 son, and many papers of that kind; some old papers of probably national intelligence; I recollect seeing some dated as far back as 1813—some old grants.

Q. Did you find any other papers besides grants relating to land titles?

A. Only that field book.

Q. Who had these papers belonged to, the grants and other newspapers and things of that character?

A. I suppose they belonged to William Davenport; they were there in his drawer.

Q. How many of those papers are of recent date that you saw there?

A. None at all—they are all old papers.

Tennessee, by her Attorney General, objects to the statement that the witness supposes these papers belonged to William Davenport, being merely opinion of his not based upon an actual knowledge.

Q. Is that a matter of supposition on your part or knowledge as to whom these papers, grants and other papers, have belonged to?

A. I had often seen my grandfather, William Davenport, handle those papers in his life time; no one else had any access to that drawer but him. I never saw anyone in it during his life.

Q. You say that you found a book marked "Field notes" in there—did you ever examine that book?

A. Yes, sir.

Q. What was its make-up and size?

A. I never measured it. About four inches wide by six and a half inches long.

Q. How was it made?

A. It seemed to have been attached together by a strong
903 thread; made from paper that is unruled, part of it, the latter part of it being unruled; I don't know that the other was ruled in its make-up but it seems to have the lines running up

and down; think they were probably made by a pencil in order to give the course and distance, putting them down in separate columns; it looks that way to me now.

Q. How was the cover, if any?

A. It was made out of thick paper or pasteboard, stitched on through the middle of the paper or to the back of these sheets of paper.

Q. Did you recognize the handwriting of anything that was written in that book?

A. Yes, sir, so I think.

Q. Whose handwritings were in that book?

A. William Davenport and Mrs. Davenport, his wife. No one else that I know of.

Q. I ask you if this book which you now hold in your hand is the one that you have spoken of?

A. Yes, sir, it is the same book that I got out of that drawer.

Q. Will you please write your name on the back of that book so that you could identify it if any question arose?

(Witness writes his name on the back of the book.)

Q. I see, on the back of this book which you have just written your name upon, an endorsement on the front of the cover—"W. Davenport's Field Book, July 18th, 1821." In whose handwriting, if you know, is that?

A. That is his signature and his writing.

Q. Did you ever compare this book with any copy or purported copy of it?

A. Yes.

Q. When?

A. Today.

Q. How carefully was that comparison made?

A. It was exact.

904 Q. Please look at the document which I hand you now and see whether or not that is the copy with which you compared the book?

A. Yes, that is the copy.

Q. Is that or is it not a correct copy of the book?

A. It is correct.

Q. Is it a copy of a part or of the whole?

A. Of the whole.

Q. All of it is copied from the book?

A. Yes.

Q. Is it a complete or incomplete copy of the book?

A. It seems to be a complete copy of it. I know it is correctly made. I went over it very carefully, every call and every thing, and it is a complete copy now.

State of North Carolina will here offer in evidence the copy to which the witness has just deposed of the book of which he has testified, and will ask that it be marked as an exhibit to his testimony in the case and a part thereof, and be attached as such exhibit to his deposition as a part of that deposition.

State of Tennessee, by her Attorney General, excepts to the filing

of this alleged copy of a book to which the witness has been referring because, as stated by him, said book does not altogether appear to be in the handwriting of W. Davenport and it has not been shown by him what part of said book is in the said Davenport's handwriting, and for the further reason that the book is the best evidence of its contents, and a copy thereof is excepted to for the reason above stated.

Defendant requests the ruling upon this objection.

State of North Carolina insists that the examiner has no duty to perform in relation to the ruling upon a subject of this character, but that his province is confined to taking down and reporting to the Court such objections as were made.

905 The objection of defendant is over-ruled and defendant appeals.

Q. I will ask you to tell me in whose handwriting the earlier portion of the book marked, "W. Davenport's Field Book," was when you found it.

A. The first three pages, in the handwriting of William Davenport.

Q. Beginning with what words?

A. "July 19th, 1821."

Q. And ending with what words?

A. "Tuesday morning," I think, or the two last words on the bottom of the third page.

Q. Whose handwriting immediately follows?

A. Mrs. Davenport's, my grandmother.

Q. Beginning with what words?

A. "Birch at the 6th mile."

Q. And ending with what words?

A. "On the Tennessee river."

Q. What page of that book is that?

A. The top of the 16th page, counting the first page as blank.

Q. Whose handwriting immediately follows what you have just spoken of as Mrs. Davenport's.

A. The handwriting of William Davenport again.

Q. With what call does it began?

A. "And runs south 320 poles."

Q. What word does it end with?

A. "72 miles on said line." That is the end of the book.

Q. I see in that book some entries of expense accounts. In whose handwriting are they on the two last pages except the cover?

A. William Davenport's.

Q. There is an entry of some kind on the back of the cover of the book. In whose handwriting is that?

A. I should say that was in the handwriting of William Davenport.

906 Q. At one part of this book of field notes I find the words "the wagon road, the 101st. mile," and that is followed by the words, "at the end of the Unicoy Mountain." In whose handwriting are those words, "the end of the Unicoy Mountains"?

A. In William Davenport's handwriting.

Q. In whose handwriting are those words that immediately precede it?

A. My grandmother's, Mrs. Davenport, his wife.

Q. Then on the next page I find the words, "thence south 15 miles and 220 poles to a post oak post on the Georgia line at 23 poles west of the 72nd. mile from the Nickajack old town on the Tennessee River." In whose handwriting are those words which I have just recited to you?

A. My grandmother's handwriting—Mrs. Davenport's.

Q. Then whose handwriting immediately follows those words on the remainder of that page?

A. William Davenport's.

Q. And on to the end of the book, whose handwriting is it?

A. All of that is William Davenport's.

Q. Has there been any change whatever in that book's contents, or any interlineation or erasure, addition or subtraction, since you first found it?

A. No, I think not.

State of North Carolina here tenders to the counsel for the State of Tennessee, for examination and comparison, the original book just testified to by the witness, and the copy which has been introduced of that book as a part of the testimony of this witness in order that the counsel for the State of Tennessee may see whether or not there are any discrepancies between the original and the copy which has been offered in evidence, and states that it is the purpose of the State of North Carolina to have the original field notes as identified by this witness by writing on the back of it the words, "W. D. Jones, April 18th, 1911," and by describing it, before the Supreme
907 Court upon the hearing of this cause for the examination of that Court.

State of Tennessee, by her Attorney General, further excepts to the copy which has been made an exhibit in this cause of the book claimed to be William Davenport's field notes for the reason that it is apparent from the statements of the witness in connection with said book that same was not a record made contemporaneous with the transaction which it purports to contain, but if made by Davenport at all, was made by him subsequent to said transaction and in no sense part of said transaction, and this objection defendant offers and will offer upon the hearing of this cause to the book itself.

Q. On several pages of this book I find cross marks made opposite each call and at the foot of one page I find these words, "Notes compared to this place." Please state whose handwriting those last words—"Notes compared to this place"—are in.

A. In William Davenport's handwriting.

Q. I find on the same page but higher up the words, "At the head of Abram's creek." Please state in whose handwriting those words are.

A. William Davenport's.

Q. In whose handwriting is the remainder of that page?

A. Mrs. Davenport's.

Q. On another page of this book I find the words, "Which is at a low gap at the head of Big Creek of Tennessee and if there ever is a wagon road run through the Big Smoky Mountains, it must go through this gap". In whose handwriting is that?

A. That entry is in William Davenport's handwriting.

Q. In whose handwriting is the remainder of that page?

A. Mrs. Davenport's.

Q. I see that the remainder of that page has been canceled. Do you find on the next page anything that is substituted for it?

908 A. It seems to have been canceled from the end of the 25th mile. Now I see on this other page it is canceled again in my grandmother's handwriting on the 26th mile, and all that on the page below that 25th mile has been canceled, including the 26th and the 27th miles, etc.

Q. I see in this book the words, "At the end of the Unicoy Mountains and runs south 320 poles to a white oak, 102 miles, August 22nd 1821" and so on, these notes being in what you have testified to be the handwriting of William Davenport, but in reading them consecutively thus, I have excluded the words which appear as follows: "Thence south 15 miles and 220 poles to a post oak post on the Georgia line at 23 poles west of the 72nd mile from the Nickajack old town on the Tennessee River." Are these last mentioned words which I say I have excluded in this manner in the handwriting of William Davenport or his wife?

A. In the handwriting of Mrs. Davenport.

Q. How long, if you know, did your grandfather reside at this place in which he died?

A. I don't know. The house that I live in has plainly on the chimney dated February, 1807. I have understood it was put there by my grandmother when the chimney was built.

Q. How long did he live there within your recollection?

A. All of my life from the time I can recollect. My mother was born and raised there.

Q. Have you any interest in this controversy between North Carolina and Tennessee other than such as you might have as a citizen of North Carolina?

A. None what ever.

Q. When did you first hear of this controversy?

A. I have seen it in the papers. Probably when the suit was first brought by North Carolina against Tennessee—don't know

909 how long ago.

Q. Have you any familiarity with the country involved in the controversy?

A. None at all. Never have been in that section—Have only been as far as the French Broad River.

Q. Do you know anything of the details of this controversy other than about this book?

A. None in the world.

Q. Are you in any way related to any person interested in this controversy?

A. None whatever that I know of.

Q. When did you first find this book at the time you spoke of having found it?

A. About the 10th of November, 1910, I think.

By Attorney General BICKETT, of North Carolina:

Q. The State of North Carolina requests you to deliver to it, through its Attorney General, the book containing the field notes of William Davenport, to be kept in the archives of the State and produced by the Attorney General at the hearing of this case before the Supreme Court of the United States, and to be thereafter returned to you upon your request. I would like you to deliver the book to me under those conditions and I will give you a receipt to that effect.

A. The United States Supreme Court could get the book anyway. I would like to keep the old book as an heirloom if nothing else. I have rather a fondness for old papers and all things that way. I should let you keep the book and if it should be used in any way at all in the courts of the country I would like to have the book returned to me for my heirs.

Q. Will you deliver the book to me on the terms mentioned in my question?

A. I suppose I will have to.

Q. Are you willing to turn it over to North Carolina under those terms?

910 A. Certainly, if it is any benefit to North Carolina.

Q. To be returned to you when North Carolina is through with it?

A. Yes.

State of North Carolina tenders now to the counsel of the State of Tennessee this original book for the purpose of examination in order to enable them to conduct any cross-examination in regard to it that they may see fit while examining this witness.

Defendant, State of Tennessee, without waiving her exceptions to the testimony of the witness as heretofore stated, proceeds to cross-examine him as follows:

Cross-examination conducted by Att'y Gen'l CHAS. T. GATES, JR.:

Q. How old was your grandfather when he died?

A. I think he was eighty-seven but am not sure about it. He was very old.

Q. Have you in your possession any paper or other book containing a record of his birth and death?

A. I have not. It is in my family but I haven't it.

Q. You haven't examined it recently?

A. No, sir, I haven't examined it.

Q. How old was your grandmother when she died?

A. She died two or three years before my grandfather. I think

she was about two years younger than he but don't know her age exactly.

Q. When, during your examination in chief, counsel for Tennessee excepted to the statement that you supposed that the papers you found in the drawer belonged to your grandfather, W. Davenport, and you were then asked by counsel for North Carolina what reason you had for making that statement, you answered in substance—"I had often seen him handling those papers during — life time". Now I suppose that answer of yours referred to some
911 old documents such as you described in other parts of your answer. Was that right?

A. I have seen him handle papers, all contracts, deeds, letters that he had received, etc., that he would put in that drawer. I have seen him handling papers—don't know what kind—old papers that he kept in his desk.

Q. You didn't mean to be understood as saying you had seen him handle that book?

A. No, I never saw the book until I discovered it November 10th, 1910.

Q. I believe you stated that you went to live on the plantation formerly owned by your grandfather about the year 1866?

A. I think so.

Q. And your grandfather died in 1857 or 1858?

A. Yes.

Q. Who lived on his plantation during the years intervening between his death and when you went to live there?

A. I think the first man who lived there was a man by the name of Uriah Cloyd that my father employed to take charge of the farm.

Q. You didn't live there during the war?

A. No, I was in the war.

Q. This old desk or secretary that you have spoken of was in the possession of whoever lived there during those intervening years?

A. Yes, it was in the house.

Q. Who was with you when this book was found?

A. Edmund Jones, Jr.

Q. Who found it, you or Edmund Jones, Jr.?

A. I did.

Q. Where has the book been since then?

A. Most of the time it has been in the safe at the Bank here.

912 Q. Where has it been all the time?

A. I let Ned have the book, make a copy of it, and after I got the book back from Ned it has been in my possession all the time. I must correct that. It was in my possession until I had it placed for safe keeping in the bank in Hickory. I got it from the Bank the other day and brought it up here.

Q. Who brought it to you?

A. I went to Hickory myself and got it.

Q. Did you bring along with you any old papers that are admittedly in the handwriting of your grandfather, W. Davenport?

A. I did not. I intended to but came off and forgot them entirely until I got nearly to Lenoir. I have hundreds of them.

Q. Did you bring any papers along that are admittedly in the handwriting of your grandmother, Mrs. Davenport?

A. No, I did not.

Q. I believe you stated that it was your understanding that your grandfather, W. Davenport, was named as the surveyor upon the part of North Carolina by an act of the General Assembly.

A. I have heard so, or rather, that there was a commissioner appointed by the State Legislature of North Carolina and he was selected by the commissioner.

Q. It was no part of your grandfather's name to have an I X?

A. Not that I know of.

Q. How much of the first part of this book did you say appeared to you to be in the handwriting of your grandfather?

A. The first three pages.

Q. Down to what?

A. The bottom of the third page.

Q. What is the last entry on page 3 of that book that you think is in the handwriting of your grandfather?

A. "In a low gap; Lay by on Sunday and Monday and set out on Tuesday morning."

913 Q. Then at the top of the next page you think it appears to begin in the handwriting of your grandmother?

A. Yes, sir.

Q. And what is the first entry on the top of the 4th page appearing, as you think, in the handwriting of your grandmother?

A. "South 30 west 70, birch at 6th mile."

Q. Then, as I understood you, from that entry "South 30 west 70, birch at 6 miles," to this entry "south 40 west 320 to a hickory and rock at the wagon road, the 101st mile," is all in the handwriting of your grandmother?

A. I think so except with a few corrections that were noted in reading over my testimony ~~in~~ chief.

Q. Let's go back to the first page. Beginning with the words, "July 19th" and ending "to where they stopped." That is in fairly distinct ink, isn't it?

A. Yes.

Q. That distinct appearance continues on the second page down to and including the entry "south 65 west 38 poles at b. gum." That appears to you to be in the handwriting of your grandfather?

A. Yes.

Q. Following the entry to near the bottom of the third page the ink is much dimmer, is it not?

A. Yes.

Q. And appears to have been made by a different pen?

A. It looks that way—is not so black.

Q. Now I call your attention to the words "chestnut" appearing in the second and third entries on the second page, and I will ask you to notice the same two words further down on the same page,

and I will ask you to state if in your opinion the same man wrote all those words.

A. Yes, I think so. The difference I can see in the letters is that these up here commence with a capital C and these down here do not.

914 Q. What about the letter *t* which ends each of these words?

A. It doesn't seem to be crossed.

Q. The fact is that the t's in the first two words are crossed?

A. Yes.

Q. While the t's in the last two words are not crossed?

A. I don't think so.

Q. Now I ask you to state if the following words at the bottom of the third written page, "in a low gap. Laid by on Sunday and Monday and set out on Tuesday morning," are not written in stronger and more distinct ink than any of the other writing on the third and fourth pages?

A. I think so. It may be because the hand was heavier. It appears to be written by the same hand only that it is different ink—it seems to be black ink.

Q. I call your attention to the following writing at the bottom of the page, "Which is at a low gap at the head of Big Creek of Tennessee, and if there ever is a wagon road through the Big Smoky mountain, it must go through this gap." I believe you stated that was in the handwriting of your grandfather in your opinion?

A. I think so.

Q. Now that is the only writing on that page, or the next page either, for that matter, that is the handwriting of your grandfather, isn't it?

A. I should think so.

Q. That also is in clearer and more distinct ink than any of the other writing on either of those pages, isn't it?

A. Yes. Whether it is a heavier hand or not, I don't know.

Q. Immediately above this writing which you have stated to be in the handwriting of your grandfather there appears to have been crossed out the courses and distances from the 25th mile to the 29th mile inclusive; that is correct, isn't it?

915 A. Yes, it looks that way.

Q. And written opposite the calls for the 27th mile is the word "Wrong," isn't it?

A. Yes.

Q. And written opposite the calls for the 28th and 29th miles are the words, "wrong, I suppose"?

A. Yes.

Q. Now in whose handwriting are these different words?

A. Mrs. Davenport's.

Q. Now I see in this copy which you file here as an exhibit to your testimony the words "wrong, I suppose" written opposite the calls for the 26th and 27th miles; that is correct, isn't it?

A. I don't know. I suppose this was all marked out, concluding

all these were wrong; it didn't make any particular difference where it was written.

Q. As a matter of fact the word "wrong" is not written opposite the call for the 26th mile, is it?

A. No; only marked out with a cross mark (X).

Q. Then this phrase "wrong, I suppose" which has been inserted upon this copy opposite the 26th and 27th miles should, in fact, be opposite the 28th and 29th miles, should it not?

A. This is opposite the 27th, 28th and the 29th miles.

Q. Isn't it a fact, Capt. Jones, that immediately subsequent to the words, "Balsam pine, 29th mile," which have been stricken out, is the following, "The above corner is against the head of the west fork of Pigeon River, near an old Indian camp (August 2, 1821)," which you say is the handwriting of your grandmother?

A. Yes.

Q. Don't those cross marks over the courses and distances of the 29th mile extend down over that writing too?

A. It looks so. They extend over the writing as written
916 by Mrs. Davenport and not by William Davenport.

Q. The cross marks striking out the courses and distances of the 29th mile extend over that which I read to you and which you say was written by Mrs. Davenport?

A. Yes.

Q. Capt. Jones, what is the last call in the 26th mile here as stricken out?

A. "South 70 west." I reckon it is. "Balsam pine, 26th mile.

Q. Now look over on the next page and tell us what is the last call in the 26th mile which has not been stricken out and which is in the handwriting, as you say, of your grandmother, Mrs. Davenport.

A. "South 70 west 160 poles to a spruce pine and a birch, 26th mile."

Q. Now what is the last call in this 28th mile that is stricken out?

A. "50 west 160 poles to a spruce pine, 28th mile."

Q. Now what is the last call on the next page that is, as you say, in the handwriting of your grandmother which is not stricken out in the 28th mile?

A. "80 west 140 poles to a beech, 28th mile, at the head of the south-west fork—Lufty."

Q. Now what is the last call in the 29th mile which was stricken out?

A. "80 west 180 to a balsam pine, 29th mile."

Q. What is the last call in the 29th mile on the opposite page which you say is in the handwriting of your grandmother, Mrs. Davenport?

A. "30 west 80, beech, 29th mile, Indian path at the head of Deep creek."

Q. Now we will turn over in this book to the 99th mile.
917 The first entry of the course and distance for the 99th mile is as follows—"South 60 west 200 poles, south 40 west 120, chestnut tree, 99th mile," and all of these entries are marked out, are they not?

A. Yes, they seem to be.

Q. And immediately following, we find, "south 45 west 220 poles, then south 20 west 100 poles, white oak, 99th mile"?

A. Yes.

Q. And you say this last entry is in the handwriting, as you think, of your grandmother?

A. Yes.

Q. When I inserted the word "poles" in my last question I did so because I understood you to say that this column containing 200, 120, 220 and 100 was intended for poles?

A. I suppose it was.

Q. That was the way it started out, wasn't it?

A. Yes.

Q. Do you mean to be understood as saying that these letters at the bottom of page —, I X D R A, are all in the handwriting of your grandfather, W. Davenport?

A. Yes, but I don't think it is I X.

Q. His initials were W. D.?

A. Yes.

Q. Don't you think he knew the difference between a W and an X?

A. I know he did.

Q. Can you imagine any reason for his putting down I X D if he intended to write W. D.?

A. I cannot imagine anything. I do know that it was intended for W. D.

Q. If the surveyor upon the part of North Carolina was William Davenport and the surveyor upon the part of Tennessee was Robert Armstrong, the letters W. D. and R. A. would represent the initial letters of their names?

918 A. Yes.

Q. But I X D would not represent your grandfather at all, would it?

A. No.

Q. Now looking at this again, isn't it quite possible that your grandfather never wrote that at all?

A. No, that is his handwriting if any of it is. I think it all is.

Q. Then if that is not in his handwriting, the remainder that you testified to as being in his handwriting is possibly not in his handwriting?

A. It is all in his handwriting to the best of my knowledge.

Q. Wouldn't that indicate that somebody had been copying something possibly and mistaken the W for an I X?

A. No, I think not.

Q. The W on the back of that book just in front of Davenport's does not look at all like I X, does it?

A. No, that is a W.

Q. I don't suppose there is any tradition in the family that your grandfather, Mrs. Davenport, was out on the survey, is there?

A. No, none at all.

Q. Now then, I believe you stated that this writing of your grand

mother ended near the bottom of the page with the words, "at the wagon road, the 101st. mile"?

A. Yes.

Q. And then immediately following, in the handwriting of your grandfather, as you think, is the following, "at the end of the Unicoy Mountain"?

A. Yes.

Q. Now these last words in the handwriting of your grandfather appear to have been written with a different ink than that which preceded it.

919 A. Yes, that may be owing to the heaviness of the hand. I am not expert enough to judge of that.

Q. Then at the top of the next page I believe you stated the following appears to you to be in the handwriting of your grandmother —"thence south 15 miles and 220 poles to a post oak post on the Georgia line, at 23 poles west of the 72nd. mile from Nickajack old town on the Tennessee River"?

A. That is my grandmother's handwriting.

Q. That is in a very dim ink?

A. Yes, appears not so black.

Q. Then following that in a heavier handwriting and including the I X D R A is the remainder of the book which you think is in the handwriting of your grandfather?

A. I think it goes all the way through in his handwriting.

Q. I believe you stated that these words at the bottom of page — "notes compared to this place" are in the handwriting of your grandfather in your opinion?

A. Yes.

Q. Now isn't it a fact that from there on to the bottom of this page where occurs the following, "at the end of the Unicoy Mountain", there is not a word or a letter in the handwriting of your grandfather?

A. I don't see any now.

Q. That is, from the 52nd. mile to the 101st. mile, there is not a word in these alleged notes that is in the handwriting of your grandfather?

A. No, it seems to be in the handwriting of his wife.

Q. Now I see here in this exhibit immediately following these words—"south 220 poles to a post on the Georgia line 23 poles west of the 72nd. mile on said line", all of which is typewritten in this exhibit, a sort of hieroglyphic made with a pen. What is that?

A. I don't know.

920 Q. What does it indicate?

A. "And so forth", it looks like to me.

Q. You have taken this book now and looked at it and do you mean to say that the hieroglyphic at the bottom of a page immediately following the words, "south 220 poles to a post oak on the Georgia line 23 poles west of the 72nd. mile on said line", is &c or "and so forth"?

A. Yes, the character for "and so forth". (Witness indicates.)

Q. So you think this is a character indicating et cetera, is that it?

A. I suppose so. It appears to be that to me.
Q. Doesn't the first turn look like a J.?
A. No.
Q. What would that indicate at that place?
A. I have no idea. I never studied that to see what it was.
Q. Then between that hieroglyphic, which you think means "and so forth", and the next typewritten matter appearing in your exhibit, there are some twelve blank pages in this book, are there not?
A. It looks that way.
Q. Unruled pages?
A. Yes.
Q. You think this handwriting on the back of the book is in your grandfather's handwriting?
A. I cannot tell whose handwriting it is in; it is so dim.
Q. It doesn't look much like the other, does it?
A. (Witness looks through glass.) That is in his handwriting too, I think. It has been rubbed a good deal by being carried, I suppose, in pockets.

Redirect examination:

921 Q. You said something about there being hundreds of papers at your house in the handwriting of William Davenport. Where are those papers?
A. There is that old desk yet—old sideboard. I don't know that the body of any papers is in his handwriting; almost all of his writing that I ever saw done at his house for him was done by my grandmother. His signature is there; possibly I might find some old letters or something of that sort. I never looked.
Q. You said that his house was for a while occupied by some gentleman. Who was that?
A. Uriah Cloyd, as overseer.
Q. Overseer for whom?
A. For my father.
Q. Then the house was under the control of whom?
A. My father.
Q. How long did it continue in his control after the death of your grandfather?
A. For some time until I took charge of it, after Mr. Cloyd left and during the latter part of the war, Postmaster General Key occupied the house; he was a relative and came there to recuperate his health, and lived there a couple of years—until a year or two after the war; he was afterwards Postmaster General of the United States and since, District Judge of the United States. Maj. James Brown from Tennessee lived there about a year after Key left and before I moved in. I moved there after he left.
Q. Under whom did Key occupy?
A. My father's supervision.
Q. Under whom did Brown occupy?
A. My father.
Q. Was the control of the house at any time out of your father after the death of William Davenport until you moved in?

A. Not a single day that I know of.

922 Q. You were asked in your cross-examination if the early portion of this book, of which you have testified was in ink that was rather dark, didn't have the word "chestnut" spelled twice with *t* crossed, and you said it did; then you said in the same handwriting further down on the same page the word "chestnut" was written in paler ink but you didn't know whether or not the *t* was crossed?

A. I think I can see the cross on it.

Q. Now turn, if you please, to the portion of the book later on which is written in heavy ink in the handwriting of William Davenport, as you testified, and reads as follows, "which is at a low gap at the head of Big Creek of Tennessee, and if there ever is a wagon road through the Big Smoky Mountain, it must go through this gap," and see whether or not the *t* is crossed in the word "through" that occurs in that passage?

A. No, sir. It is not crossed at that place.

Q. You spoke of a portion of this book where a greater part of a page had been canceled and the words "wrong, I suppose" and "wrong" written on it; did those cancellations appear in the copy which you filed as a portion of your testimony?

A. I don't recollect. (Witness looks at copy.) Yes, that shows it.

Q. Did that copy you filed, every time anything had been canceled show it and then show the canceled marks?

A. Yes.

Q. You say that these words, "wrong, I suppose" and "wrong," as written on this page where the most of the page is canceled, in your opinion, relate to the entire page?

A. I should think so.

Q. You were asked in regard to a portion of this book which reads, "and runs up the bed of said river upwards of a mile to a maple on the south side, marked" and then follow certain letters; that you thought was W D R A?

923 A. I am satisfied it is W D; at the first glance it looks like I X D. The other initials are the person's appointed by Tennessee as a surveyor, I suppose.

Q. Isn't the W D made as a sort of monogram by making the W and then making the back of the D a part of the W?

A. Yes, it looks that way.

Q. You were shown a W on the endorsement on the front of the first cover of the book and asked to compare it with that which you have just testified you thought was W D; that on the back of the book is in script, is it not?

A. Yes.

Q. But that where you said you thought was W D is printed with a pen, is it not?

A. Yes.

Q. Would you expect those two to be alike then, if one was script and the other printed with a pen?

A. No, I shouldn't think they would be exactly alike.

Q. You were asked on your cross-examination if anything appeared after the words written in the original, "notes compared to this place," which was in the handwriting of William Davenport, down to a certain point, and you said you saw nothing. I ask you if you find later on than that point any of the handwriting of William Davenport in that book as continuing the notes?

A. On this next page, I do.

Q. And then on any subsequent page?

A. Yes, on the next two pages.

Recross-examination:

Q. Put the glass on the I X at the bottom of the page which you think is a W. Let me ask you if it doesn't plainly show, both without the glass and with it, that the X does not join the first stem and is clearly an I.

A. No, it does not join it.

924 Redirect examination:

Q. Did you ever see an attempt in printing that did not join all the parts of the letter?

A. Yes.

(Signed) W. D. JONES.

(It is agreed that the witness may sign his deposition in the presence of the Notary in the absence of the parties.)

NORTH CAROLINA,
Caldwell County:

I, J. H. Beall, a Notary Public in and for said county and State do hereby certify that at Lenoir, N. C., on the 18th day of April 1911, W. D. Jones personally appeared before me, and, after being duly sworn, made the foregoing deposition, and I further certify that he has signed the same in my presence.

Lenoir, N. C., April 18th, 1911.

[SEAL.]

J. H. BEALL,
Notary Public and Examiner.

My commission expires May 11th, 1911.

925 Exhibit "A" to the testimony of W. D. Jones, this 18th day of April, 1911.

[SEAL.]

J. H. BEALL,
Notary Public and Examiner.

My commission expires May 11th, 1911.

This exhibit also applies to the testimony of Mrs. Emma Harper Cilley taken at Hickory, N. C., before me on the 19th day of April 1911.

J. H. BEALL,
Notary Public and Examiner.

"W. *Davenport's Field Book July 18th,* 1821."

"July 19th. 1821 began at the Cattalucha track to run the line between the State of North Carolina & Tennessee Marked a rock there on North Carolina side N. C. 1821 and on the other side T. E. N 1821—and runs with the line that J. M. Dowel. M. Mathews & D. Vance run in the year 1799 and runs with said line about 2 miles and a half to where they stopped

South	88 W	6 poles	—Hickory	
No.	42 W	12 Do.	—Chestnut	
South	64 W	14 Do.	—Chestnut	
South	50 Do.	16 Do.	Bo.	
Do.	64 W	27 Do.	Pine	
926				
West		30 Do.	Chas't	
South	65 W	38 Do.	B. Gum	
S	18 W	23 Poles		
S	30 W	60 Poles		
N	80 W	100 Poles	Chestnut	1st M
N N	60 W	60 P		
N S	75 W	100 P		
N S	60 W	80 P		
N West		80 P	Chestnut	2nd M
N West		40 P		
N S	75 W	30 P		
N S	85 W	40 P		
N S	50 W	50 P		
N S	80 W	40 P		
N N	80 W	50 P		
N S	60 W	20 P		
N N	80 W	50 P	Maple	3rd M
N N	80 W	60 P		
S	50 W	70 P	to the top of the Smoky mountains at a spring on the extreme height of the Mountain.	
N S	50 W	20 P		
N S	30 W	80 P		
N South		90 P	Burch	4th M
N S	20 E	40 P		
N S	30 W	100 P		
N S	15 W	120 P		
N S	70 W	60 P	red oak	5th M
927				
N S	80 W	70 P		
N S	30 W	100 P		
N S	25 W	80 P	To red oak in a low gap lay by on Sunday and Monday and set out Tuesday morning	

X South	30 W	70	Burch at 6 miles
Due So.		80	
"	35 W	60	
"	70 W	180	spruce pine at 7 miles
X South	30 W	100	
Due West		100	
X South	40 W	120	
X S	70 W	320	Spruce pine at 8 miles Spruce pine at 9 Miles
S	80 W	228	
X due South		40	
X South	10 W	52	fir or balsom pine at 10 miles
X "	10 W	40 P	
X "	65 W	80 P	
X "	60 W	60 P	
X "	35 W	140 P	Fir or balsom pine at 11 Miles
X S	75 W	100 P	
X "	30 East	154 P	
X due South		166 P	Balsom pine at 12 Miles at the top of the main Smoky or Iron Mountain
X South		160 P	on a high Mt. head of big creek from the point to the White Rock N 15 E
X South	20 East	80 P	
X South	40 West	80 P	Bush at 13 Miles
X "	10 West	80 P	
X "	55 West	80 P	
X due West		80	
X South	60 West	80	Spruce pine at 14 Miles on a high point of Smoky Mts.
928			
X due South		160	low Gap
X South	30 West	80	
X "	70 West	80	Burch at 15 Miles
X South	40 West	80	
X "	80 West	80	
X	35 West	80	
X "	25 West	80	to a Burch & Mt. China tree t 16 miles in a low gap between East fork of Little Pigeon and Oconolufty River
		V	
X South	10 West	80	
X "	25 West	60	

X due South		40	
X South	20 West	140	Spruce pine at 17 miles
South X	30 West	40	
"	50 West	120	
X "	75 West	80	
Due West		80	Fir or balsom at 18 miles
X South	80 West	40	
X North	70 West	120	
X North	45 West	160	Spruce pine at 19 miles
X South	60 West	40	
Due X West		220	
North X	70 West	60	Spruce pine at 20 miles at the top of an extreme high pinacle in view of Severeville
South X	50 West	260	
"	70 W	60	Burch on high point at 21 miles
South X	85 W	40	
" X	30 W	180	
" X	10 East	100	Spruce pine at 22 miles
X South	25 West	94	to Porter's Gap, from Porters Gap
South	15 East	20	(30th July 1821)
929			
"	50 West	60	
	30 West	60	
	70 W	86	Spruce pine at 23rd mile
South	30 W	80	
	80 W	40	to the Indian Spring waters of Lufty
	80 W	40	
	60 W	160	Burch 24th mile
South	20 W	80	
	60 W	180	
Due South		60	Spruce pine at 25th mile
North	65 West	60	Spruce pine 25 mile. August the 1st 1821

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	35 West	60	
	70 W	40	
South	60 W	100	
North	65 W	60	
South	70 W	60	Balsom pine 26 mile

South	30 W	60	
	70 W	100	
	40 W	60	
	West	60	
North	60 W	40	Balsom pine 27th mile
No.	60 W	100	
	West	60	
No.	50 W	160	Spruce pine 28th mile
North	40 W	80	
	65 W	60	
	80 W	180	Balsom pine 29th the above corner is against the head of the west fork of Pigeon River near an old Indian Camp (Aug. the 2nd 1821) which is at a low Gap at the head of Big Creek of Tennessee and if there ever is a wagon road through the Big Smokies Mountain it must go through this Gap

[On right margin:] "Wrong I suppose" "Wrong"

930

5th of August 1821

South	20 West	160	
South	70	160	Spruce pine and Burch 26 mile
South	55 West	100	
	40 West	160	
——	— West	60	Balsom pine 27th mile (Aug. 6th 1821)
South	75 West	40	
	10 W	40	
	70 Wt.	100	
	80 Wt.	140	Beach 28th mile at the head of the South Wt. fork Lufty
	West	160	
South	45 Wt.	80	
	30 Wt.	80	Beach 29th mile Indian path at the head of deep cr.
South	20 Wt.	80	
	50 Wt.	60	
	15 Wt.	80	
	30 Wt.	100	Spruce pine 30th mile

[Matter enclosed between rules erased in copy.]

South	55 Wt.	320	Wild Cherry tree 31st mile (Aug. 7th)
South	50 Wt.	160	to Meiges post
	40 West	160	Balsom pine 32nd mile head of Little River.
South	25 West	320	Balsom pine 33rd mile
South	75 West	100	
South	40 West	120	
	80 West	100	Balsom pine 34th mile in view of Blass town
	West	120	
South	75 West	100	
North	70 West	100	Spruce pine 35th mile
931			
South	75 West	160	
	West	160	Buck eye 36th mile, in rich beech flat Aug. 8th 1821
South	80 West	80	
	60 West	120	
North	75 West	120	Mount China 37th mile
	West	160	(August the 9th 1821)
South	50 West	40	
Due West		120	Beach 38th mile
South	70 West	180	
North	60 West	140	Chery tree 39th mile
North	60 West	320	Cherry tree 40th mile
"	70 West	160	
South	45 West	80	
"	70 West	80	Beach 41st mile
South	70 West	80	10th of August 1821
Due West		80	
South	60 West	160	Beach 42nd mile
North	65 West	100	
South	45 West	160	
Due West		60	Spanish oak 43rd mile
North	65 West	80	
Due West		240	Beach 44th mile
South	80 West	320	Beach 45th mile head of the West fork Little River
South	55 West	40	
South	80 West	280	Beach 46th mile

North	55 West	60	
South	50 West	140	
North	80 West	120	Beach 47th mile
932			
South	55 West	160	(August 11th 1821)
"	70 West	160	Buck eye 48th mile
Due West		320	Burch 49th mile, at the head of Abrums Creek
South	40 West	100	
North	70 West	120	
South	50 West	100	Red Oak 50th mile
Due West		80	
South	30 West	40	
"	80 West	100	
"	10 West	100	Cucumber tree 51st mile
South	40 West	200	
"	75 West	60	
	10 West	60	Chestnut Tree 52nd mile
South	75 West	120	Notes compared to this place
	35 West	100	
	60 West	100	White oak 53rd mile
South	35 West	200	(August 13th 1821)
	50 West	120	Red oak 54th mile at Equeneetly path to Cades Cove
South	60 West	100	
	70 West	120	
Due West		100	Red oak 55th mile
South	60 West	320	Red oak 56th mile
Due West		320	To the top of the bald spot is sight of Tellassee Old Town 57th mile
South	65 West	320	Red oak 58th mile in the edge of the second bald spot
South	25 West	320	Red oak 59th mile
South	45 West	160	
	25 West	160	Hickory 60th mile in a low Gap at the path from Equineetly to Tellassee

South	20 West	60	August 14th, 1821
	50 West	100	
933			
South	20 West	160	Red oak 61st Mile
South	20 West	60	
South		60	
South	50 West	100	
Due West		100	Locust 62nd Mile
South	75 West	220	
	55 West	100	Red oak 63rd Mile
South	30 West	40	
	45 West	80	
	15 West	80	
	60 West	120	Large White oak 64th Mile
South	75 West	320	Crossing Tennessee River to a large White pine So. side of the River at the mouth of a large Creek 65th Mile.
(August 15th)			
South		80	Up said Creek
	40 West	80	
	70 West	40	
South		60	
Due West		60	Spruce pine 66th Mile
South	65 West	80	
	20 West	60	
	70 West	40	
	20 West	140	Burch 67th Mile at Cheogee path
Due West		140	(August 16th 1821)
South	15 West	180	Sycamore 68th Mile
South	30 West	180	
Due West		20	
South	35 West	120	Maple on the East bank of said Creek 69th Mile
South	30 West	320	Beech on the West bank of said Creek 70th Mile
South		40	
	10 West	60	(August 17 1821)
Due West		60	
South	30 West	200	Pine 71st Mile

934

South	35 West	80	
	80 West	160	
	30 West	80	White oak 72 Mile on a ridge between the aforesaid Cr. and Citico Cr.
South	30 East	200	
	60 East	120	Red oak 73rd Mile
South		100	
	45 East	100	
	10 West	120	Maple 74th Mile.
South	25 East	160	
	10 East	160	Beach 75th Mile Main Mountain
South	25 West	320	Spanish oak 76th Mile in a low Gap
South	25 West	100	August 18th 1821
South		60	
	55 West	160	Red oak 77th Mile
South	20 West	40	
	70 West	80	
South		40	
	45 East	160	Maple 78th Mile
South	15 West	100	
	70 East	100	
	30 East	120	Beach 79th Mile
South	20 West	260	
	10 East	60	Beach 80th Mile
South		100	
	60 East	220	Red Oak 81st Mile
South	15 East	200	
	25 West	80	
	40 West	40	Beach 82nd Mile

935

South	40 West	40	
	50 West	160	
	40 West	120	Red Oak 83rd Mile
South	40 West	320	Locust 84th Mile

South	40 West	120	(August 19th, 1821)
	60 West	200	Chestnut Oak 85th Mile
South	60 West	320	Holly tree 86th Mile near the head of the Middle Fork of Tellico River
South	20 West	80	
	65 West	240	Red oak 87th Mile
South	80 West	320	Ed Oak 88th Mile
South	80 West	100	
North	80 West	60	(August 20th 1821)
South	50 West	120	
	10 West	40	Hickory 89th Mile at the head of Beaverdam Creek
South	10 West	100	
Due West		100	
North	60 West	120	White Oak 90th Mile
Due West		140	
South	70 West	180	White oak 91st Mile
South	15 West	100	
North	80 West	160	
South	45 West	60	Red oak 92nd Mile
South	55 West	280	
North	45 West	40	Red oak 93rd Mile to the trading path leading from the Valley Towns to the overhill settlements
North	45 West	80	
South	80 West	120	
North	25 West	120	White oak 94th Mile on said path
North	40 West	320	White oak 95th Mile on said path
936			
North	40 West	50	
	70 West	50	
South	45 West	80	(August 21st 1821)
	70 West	40	
North	80 West	80	
South	70 West	20	White oak 96th Mile on the top of the Unicoy mountain
South	50 West	200	
	30 West	120	Red Oak 97th Mile

South	40 West	160	
	60 West	160	Chestnut tree 98th Mile
South	45 West	220	
	20 West	100	White oak 99th Mile
South	60 West	200	
	40 West	120	Chestnut tree 100th Mile
South	40 West	320	To a hickory and rock at the wagon road 101st Mile", at

the end of the Unicoy mountains "Thence South 15 miles & 220 poles to a post oak post on the Georgia line at 23 poles West of the 72nd Mile from the Nickijack old town on the Tennessee River" and runs South 320 poles to a White oak 102 mi. August 22, 1821)

South 320 P—to a pine 103 mile Xing Branch

937 South 252 poles to a Spruce pine on the bank of Highawassee River below the mouth of Cane Creek and runs up the bed of said River upwards of a mile to a Maple on the South side marked IXDRA then the same course South 53 poles to a holly the 105 m (Aug. 23rd)

South 320 p Spanish oak 106th Mile.
South 329 P to Post oak 107 Mile
South 320 p to a Spanish oak 108th Mile
South 320 P Post oak 109 Mile
South 320 Poles crossing to a white oak 110th Mile
South 320 poles to a black oak 111th Mile
South 320 P to a Red oak 112th mile crossing a mountain

August 24.

South 320 P to a Red oak 113th mile.
South 320 poles to a white oak 114th mile
South 320 poles to a Black Gum 115th Mile
South 320 poles to a post oak 116th Mile.
South 220 poles to a post on the Georgia line 23 poles West of the 72 mile on said line.

938 In the back of the book of field notes are the following entries:—

"Co. Mebane paid at Hill's for General Stokes	87½
ferage and turnpike	25
at upper turnpike	50
at Ashville	75
ar Davidson	37½
at Pattons	6¼
"Col. Mebane paid W. D. expense from Knoxville home	
Paid at Hill's	87½

Paid at Nelson's	75	cents
ferage &c.	25	
at upper turnpike	50	
at Asheville	75	
at Davidson's	37½	
	3.50	"

37½ cents paid at Forbays bt. Gen'l Stokes for me
Lenit Col. Maben $4."
"Severe County election 1821 for Govr. Carroll 492
Ward 38
For Congress Cocke 477
For Senate Gillespie 264 Lowery 241
Representative 498"

Endorsed: No. 6. Original. State of North Carolina vs. The State of Tennessee. Depositions of W. D. Jones and Emma Harper Cilley. J. H. Beall, Notary Public. Office of the Clerk Supreme Court U. S. Received May 3, 1911.

939 And the further examination of witnesses was by consent postponed and removed to Hickory, North Carolina, and to be resumed on tomorrow, the 19th inst.

And at Hickory, North Carolina, on Wednesday, the 19th day of April, 1911, the examination of witnesses was resumed at the residence of Mrs. Emma Harper Cilley, in the said town of Hickory, at 9:30 o'clock A. M., before J. H. Beall, as commissioner and Notary Public; the State of North Carolina being represented by Attorney General T. W. Bickett of North Carolina, Messrs. Theo. F. Davidson and F. A. Sondley, and Hon. W. B. Councill, counsel, and the State of Tennessee, by the Hon. Charles T. Cates, Jr., Attorney General, and T. E. H. McCroskey, Esq., when and where the witness, Mrs. EMMA HARPER CILLEY, first being duly sworn, deposed as follows:

Examination by Mr. F. A. SONDLEY:

Q. Your name is what?
A. Emma Harper Cilley.
Q. What is your age?
A. I am sixty-six years old.
Q. In what year were you married?
A. In 1868.
Q. Who was your husband?
A. Col. Clinton A. Cilley.
Q. Is he living or dead?
A. He is dead.
Q. Where is your residence now?
A. Here, at my son's house. I am staying in the winter and spend the summer on the Yadkin. I live in Hickory, N. C.

Q. What relation, if any, were you to the late Col. William Davenport, who was connected in 1821 with surveying a portion of the boundary line between North Carolina and Tennessee?

A. He was my step-great-grandfather.

940 Q. And what relationship existed between you and his wife?

A. She was my real great-grandmother.

Q. How long were you acquainted and how intimately with Col. Davenport and his wife, Mrs. Davenport?

A. I was born in his house December 21st, 1844, and I knew them intimately until her death, January 4th, 1858 or 1859, and he died in August, 1859.

Q. During his life how nearly did you live to his home?

A. My father's plantation adjoined his.

Q. Was he residing at that time in the house now occupied by Mr. William Davenport Jones?

A. Yes, sir, he was.

Q. How long did he live there within your knowledge?

A. He had lived there all my life but I know that he built the house in 1807.

Q. When he died where were you living?

A. At my father's house at Patterson, N. C.

Q. How far from William Davenport's?

A. A mile and a half.

Q. How often have — been at Col. William Davenport's during his life?

A. I was there almost all the time for the first year or two of my life, and after that I was there on an average of about twice a month.

Q. Did you see Col. Davenport frequently on those visits?

A. Always, and he often came to my father's residence.

Q. Did you ever acquire a familiarity with his handwriting?

A. I knew his handwriting but I cannot swear that I remember ever to have seen him write.

Q. How do you get that information as to his handwriting?

A. I was so familiar with his name in books and papers,

941 and perhaps notes written to my father; he was very fond of my father.

Q. Was there any question about those notes and signatures being genuine that you had seen or were they admittedly his?

A. No, they were genuine; they were sent by a negro man; he would write to the store, ordering things; I have seen Grandpa's writing all my life as long as he lived but I cannot swear that I ever saw him write.

Q. Would you know the handwriting of Mrs. Davenport, his wife?

A. I am just as familiar with it as I have ever been with my own.

Q. How did you acquire your knowledge of that?

A. I have seen her write.

Q. Often?

A. I cannot swear that I saw her write often but I have seen her write.

Q. Have you had familiarity with or do you know papers to have been written by her?

A. Of a great many.

Q. Did you know anything of the habits of Col. Davenport about being assisted by anyone in writing?

A. I know that my grandmother was his secretary, his amanuensis. I have heard that always from my mother and my father and from other members of the family.

Q. Did you ever have any personal knowledge of the matter?

A. Yes, I have.

Q. Do you remember any pieces of furniture that Col. William Davenport used for keeping his valuable papers and writing materials in?

A. Yes, I know them well, and wherever they are now, if I should see them I would recognize them; they were there when I was born.

Q. What sort of a desk did he use for writing?

A. He usually would write on a table; Grandma wrote on a table too; they had what was called a secretary or book case with
942 drawers below and a shelf that let down; they kept writing materials in there but never wrote on it because the shelf was too high. But at the same time they had a large walnut sideboard that had drawers.

Q. Will you kindly look at this book which I now hand you and on the back of which I see is written "W. D. Jones, April 18th., 1911." and see if you ever saw that book before?

A. Yes, I have seen that book before. I saw this book a month or so ago when my cousin, Mr. Ned Jones, of Lenoir, brought this book to me and I recognized it; that was Edmund Jones, Jr., of Lenoir. I recognized it at once as being Grandpa's writing on the back and then he allowed me to look on the inside.

Q. On the back of that book I see written "W. Davenport's Field Book July 18th., 1821. Do you know the handwriting of that?

A. I know that that is Grandpa Davenport's writing.

Q. Opening the book I will ask you to examine the first three pages that are written and see in whose handwriting, if you know, those pages are.

A. That first page and second page are Grandpa's writing and Grandpa's spelling too; the third page also.

Q. In whose handwriting is the 4th page, if you know?

A. Grandma Davenport's.

Q. Turning over, please tell me if there is any change of handwriting that you recognize before the words, "Which is at a low gap at the head of Big Creek of Tennessee" and those which follow.

A. I don't see any change at all. Grandpa wrote this down here —"Which is at a low gap," I think. I know he did.

Q. Read over what you think he wrote.

A. "Which is at a low gap at the head of Big Creek of Tennessee, and if there ever is a wagon road through the Big Smoky Mountain, it must go through this gap." Grandpa evidently inter-
943 polated that after the book was written. That is in his handwriting.

Q. In whose handwriting is the following page?
A. Grandma's.
Q. The next page thereafter?
A. Yes.
Q. The next page?
A. Down here, this "notes compared to this place," is in grandfather's handwriting.
Q. I see on the same page the words "At the head of Abram's Creek." Who wrote that?
A. I don't know whether that is Grandma's or Grandpa's; that is Grandma's A—That A is the same as the A she made. I cannot swear as to that "at the head of Abram's Creek."
Q. Whose handwriting is the remainder of the page, leaving out those two passages that I have asked you about?
A. Grandma Davenport's.
Q. Following on we have one, two, three, four; examine and see whose handwriting is after that page of which you have just spoken.
A. Grandma Davenport's writing.
Q. On the next page after those four pages, I find the words, "at the end of the Unicoy Mountain" at the bottom of the page; do you know who wrote those?
A. Grandpa.
Q. Who wrote the remainder of that page?
A. Grandma.
Q. On the next succeeding page I find the words, "Thence south 15 miles and 220 poles to post oak post on the Georgia line at 23 poles west of the 72nd. mile from the Nickajack old town on the Tennessee River." Please state, if you know, in whose handwriting those words which I have just recited are.
A. I think they are Grandma's; feel pretty sure they are hers, though they are not written with her usual care; but I think
944 they are in her handwriting.
Q. In whose handwriting is what follows on that page?
A. Grandpa's.
Q. And on the next two pages thereafter?
A. Grandpa's.
Q. Then after that occur some blank pages in the book and still later some accounts on two separate pages. I wish you would examine those accounts and see in whose handwriting they are; the last two pages in the book, leaving out the covers.
A. They are Grandpa's.
Q. On the back of the book, the outside of the cover, I notice something written about an election in Sevier County; whose handwriting are those words in?
A. Grandpa's.
Q. Have you any interest in the dispute between North Carolina and Tennessee in regard to any lands or the location of a dividing line between them other than such as you might have merely by reason of being a citizen of the State of North Carolina?
A. Not the slightest.
Q. Do you know anything about the point of controversy between the two States about the location of the line?

A. I merely know that I have heard that there was some disputed territory.

Q. Speaking of that old secretary, what did you say your grandfather was accustomed to keep in it?

A. I didn't say. I know what he was accustomed to keep on it. There was a great deal of handsome cut glass on it, and a very handsome cut glass decanter and there was some French brandy in it and a dish of sourwood honey. Grandpa was one of the most temperate men I ever knew, but a great many people stopped there and were always invited to take something. As to inside of that sideboard, I cannot say except that I think in the large drawer they kept
945 table clothes and things of that kind, and then in the lower part that was opened by doors they had beautiful china—old fashioned china, of course.

Q. You didn't know what was kept in the small drawers of which you spoke?

A. No. I was only about fourteen when Grandma died.

Q. When did you first see this book about which I have been asking you questions?

A. I never saw it in my life until my cousin, Edmund Jones, Jr., brought it into this house, probably a month ago. No, it was in February, about the 25th.

Q. Speaking of this sideboard that you have referred to in the William Davenport house, did it remain there after his death or was it removed from the house?

A. It was never removed from the house. I don't think it has ever been outside of the house since it was made on the plantation long before I was born.

Q. You spoke of having heard of some controversy between North Carolina and Tennessee. How long since you have known there was such a controversy?

A. I heard of it last summer when I was at my cousin William Jones' house, this same house, and my cousin, Ned Jones, came over there and spoke of the matter. It was then that I first heard of the controversy; my cousin came over there and was talking about it; that was probably September or October when my cousin, Ned, came over there; and I understood they wanted to find the notes but did not know where.

Q. Have you ever heard of any controversy of this nature existing before that time?

A. Never.

946 Cross-examination of the witness by Hon. CHAS T. CATES, JR., Attorney General of Tennessee:

Q. You were about fourteen years old when your grandmother Davenport died?

A. Yes.

Q. And something between fourteen and fifteen when your grandfather died?

A. Yes.

Q. I believe you said you never saw him write any.

A. I said I couldn't swear that I had. It is very likely I did; he was often at our house and I was often at his but I cannot remember seeing him write.

Q. Your knowledge of his handwriting, I take it, has been largely acquired in your judgment since his death from examining papers that you think were in his handwriting?

A. Yes.

Q. Have you any of those papers that are undisputedly in his handwriting that you could present here?

A. Yes, I have some; they are deeds to land where he signed his name as witness or something of that kind. I have seen his name in books, seen his name and writing in notes to my father where he would order things from the store—send up a servant; nobody kept those notes or anything of that kind.

Q. Have you a deed now in your possession in his handwriting?

A. I may have one deed in his handwriting. I have papers in Grandma's handwriting.

Q. I would be very glad if you would produce a deed in his handwriting and file it as an exhibit.

A. I don't think I would like for the paper to go out of the house—it is so old.

Q. Do you think that this writing at the bottom of the second page of this book is the same as that which appears on the
947 first page?

A. Yes, I do indeed. My grandfather was one of nature's noblemen but did not have educational advantages—Grandma had more. Don't you see how "Chestnut" is spelled along there? That is his writing and his spelling.

Q. What is the matter with the word "Chestnut"?

A. There used to be a *t* in it.

Q. Will you find the "chestnut" that is spelled that way the "chestnut" in your grandmother's handwriting?

A. She copied exactly, verbatim et literatim; she would be obliged to copy letter for letter. I find one here in her writing where it is spelled that way; she was compelled by law to copy register's deeds and things of that kind exactly.

Q. This "chestnut" you referred to is just above the word "notes" in the "notes compared to this place"?

A. Yes.

Q. That "chestnut" is very much like this "chestnut" over on top of the second page?

A. Yes.

Q. Did you find any other word "chestnut"?

A. No, my eye just fell on that as being a word that was not spelled correctly. George Washington spelled ever so many words wrong.

Q. When did you say you were over at W. D. Jones's when you heard from Edmund Jones about this controversy?

A. I went there in August and stayed until the last of September.

Q. You were there in November too?

A. Yes, I was. Mr. Peck was there but I didn't see him. I regretted very much that I did not. He only drove in the yard.

Q. Then you don't know of your own knowledge that Mr. Peck was there.

A. No. I had met him before and would have been glad to see him, he didn't come in the house.

948 Q. Were you there on November 10th?

A. Yes, I was.

Q. Did William Davenport Jones tell you that day about finding that book?

A. He did not. I didn't know the book was found until in February of this year.

Q. Did you know that he and Edmund Jones, Jr., were searching for papers and documents there on or about the 10th. of November, 1910?

A. I was in the family room and my cousin, William Jones, and his nephew, Edmund Jones, were in the dining room where this old sideboard stands, and they had a mass of papers there but I did not go into the room while they were looking at them.

Q. You knew they were searching for papers that bear on this State line controversy?

A. I knew they were looking for some papers.

Q. Bearing on this State line controversy?

A. I don't know. I won't swear to that. I am not in the habit of asking curious questions, you know.

Q. I understood you to say that Edmund Jones, Jr., had mentioned to you about the controversy.

A. He mentioned it in this way; he was talking about his Lumber Company and spoke of Mr. Shields and Mr. Peck and I said I knew them; we were just talking about the gentlemen and he said he was looking for some papers and asked me if I knew anything about any of Grandpa's notes about the survey of the State line, and I told him I did not but that I had heard some stories connected with it.

Q. Then you did know, from Edmund Jones, Jr., that they were searching there at W. D. Jones's house for papers relating to this survey?

A. Yes, I had that impression.

Q. You saw them have a lot of drawers and some papers

949 out there on the floor in the dining room?

A. I did not. I said they had a mass of papers but not drawers on the floor. I didn't see the mass of papers in the dining room; my cousin brought some papers out into the family room and laid them on the table, and one was an account my grandfather had kept of my mother's expenses; she was raised in his house.

Q. Suffice it to say that they did not say anything about finding this book?

A. They did not.

Q. You have mentioned two pieces of furniture, a secretary and a sideboard?

A. Yes.

Q. Those were different pieces of furniture?

A. They were; one had a book case above and the drawer that let down.

Q. Were there drawers inside of that?

A. Not that I know of. It has been away from that house 25 or 30 or 35 years.

Q. That piece of furniture was your grandfather's secretary?

A. Yes; that has been gone at least thirty-five years; it was removed to Clover Hill, my uncle Edmund Jones's home.

Q. And left the old sideboard there?

A. Yes, and the old cupboard and clock; that old sideboard was never used as a secretary.

Q. You don't recollect when you were a girl to have ever noticed your grandfather storing away papers in that old sideboard?

A. I don't remember that. I was too young to have noticed.

Q. Do you know of any other paper in the Jones family or in the connection, Lenoir or Davenport connection, which bears upon this controversy?

A. I do not.

Q. You never saw this book when you were a girl?

A. I am sure I never did—perfectly sure of that. I don't
950 think anybody, unless it was my grandpa and grandmother and perhaps his daughter, Mrs. Jones, knew of the existence of that secret drawer.

Q. Mrs. Jones was Capt. Jones's mother?

A. Yes.

Q. Have you seen the secret drawer?

A. Never.

Q. Then you don't know where the book was found?

A. I do not. I was talking to my cousin about it (the secret drawer) last summer and he said—"of course I don't show it to people but my nearest friends and children, of course I want them to know where it is."

Q. You mean a secret drawer in the sideboard?

A. I do.

Q. Not in the Secretary?

A. No. I have not seen it in twenty years. I have no doubt my cousin, Mr. Jones, would have shown me the secret drawer if I had asked him to show it me.

Redirect examination:

Q. Where is Mr. Edmund Jones, Jr., whom you designate familiarly as Ned Jones?

A. He is the son of Edmund Jones of Lenoir; he lives just outside of the corporate limits of Lenoir, N. C., about a mile from town.

Q. You spoke of little drawers in some piece of furniture—that was in the sideboard?

A. The secret drawer is in the sideboard; the secretary has not been in William Jones's house in thirty years.

Q. Who has been in control of that house since the death of William Davenport?

A. One of the first people to live in it was Col. D. M. Key of Tenn. who married a cousin of ours and was a refugee from Tenn.

951 He lived there about two years.

Q. Did he occupy as tenant or owner?

A. As tenant of my Uncle Edmund Jones, who married Sophia Davenport, Grandpa's only surviving child.

Q. Who, besides he, have been in occupancy of that house since the death of Col. William Davenport?

A. They had a renter in there, a man named Uriah Cloyd, and after that my cousin William Jones moved into the house. And a man named James Brown from Tennessee, who was a refugee, also lived there.

Q. Were Brown and Cloyd tenants or did they claim as owners?

A. They were tenants—renters.

Q. Who exercised the control over the property and rented it to them during those days when they were tenants?

A. Col. Edmund Jones.

Q. The father of William Davenport Jones?

A. Yes, and the father of Edmund Jones of Lenoir.

Recross-examination:

Q. Col. Edmund Jones is the father of the young man that you called Ned Jones or Edmund Jones, Jr.?

A. Edmund W. Jones was the father of Edmund Jones of Lenoir; then Edmund Jones, Jr., is the one I have been speaking of as Ned. Edmund Jones, Sr., is the lawyer living at Lenoir.

Q. The administrator of William Davenport?

A. No, it was Edmund W. Jones who was the administrator of Col. William Davenport.

Q. This Edmund Jones, Sr., is the administrator of his father?

A. Yes, but his father has been dead over thirty years, thirty-four, I reckon. I should think the administratorship would have closed long ago.

Defendant, State of Tennessee, excepts to the testimony o

952 Mrs. Cilley, the witness, in giving her opinion as to the hand writing contained in this book because she has not qualifie herself to express an opinion in relation to the handwriting, it bein apparent that her knowledge of the handwriting of William Daver port has been acquired since his death.

Whereupon, when this exception was noted, the witness proceede to say—"no, I knew his handwriting before his death."

Q. But, Mrs. Cilley, I understood you to say that you could n recall ever to have seen him write?

A. No, I will not swear that I ever saw him write, though I a confident that I have seen him write, having been with him much and having been at his house so much.

Q. It was the exception that I had noted to your deposition th caused you to make the additional statement that you did, was not?

A. No; I merely wanted to be clear—to make a clear statemer

Q. I want you to be clearer too, Mrs. Cilley, but I understood you to say in your original examination that you could not recall that you had ever seen Col. William Davenport write.

A. No. I cannot and swear to it.

(Signed) EMMA HARPER CILLEY.

NORTH CAROLINA,
Caldwell County:

I, J. H. Beall, a Notary Public in and for said county and State, do hereby certify that at Hickory, N. C., on the 19th day of April, 1911, Mrs. Emma Harper Cilley personally appeared before me, and, after being duly sworn, made the foregoing deposition, and I further certify that she has signed same in my presence.

Hickory, N. C., April 19th, 1911.

[SEAL.] J. H. BEALL,
Notary Public & Examiner.

My commission expires May 11th, 1911.

953 And thereupon, by the consent of both parties, the further taking of the depositions and testimony under the notice heretofore given shall be continued to and resumed at Asheville, on Monday, the 1st day of May next, beginning at 9 A. M., in the Federal Court Building in the City of Asheville, N. C.

Defendant, State of Tennessee, by her Attorney General, makes this agreement with the understanding that if he finds it inconvenient to be there on May 1st, he will notify the Attorney General of North Carolina or counsel at least one day in advance.

Sworn to and subscribed before me this the 19th day of April, 1911.

J. H. BEALL,

[SEAL.] *Commissioner and Notary Public.*

My commission expires May 11th, 1911.

Endorsed: No. 6, Original. State of North Carolina vs. The State of Tennessee. Depositions of W. D. Jones and Emma Harper Cilley. J. H. Beall, Notary Public. Office of the Clerk Supreme Court U. S. Received May 3, 1911.

954 D. B. BURNS, a witness for the State of North Carolina, recalled.

Examined by Mr. F. A. SONDLEY:

Q. You have been examined in this case on the part of the State of North Carolina before, I believe, Mr. Burns?

A. Yes, sir.

Q. At the time of your examination heretofore in different—various parts of your original and cross and re-direct and recross &c. examinations, had you ever up to the time you were last upon the stand, seen the original of William Davenport's field book?

A. No, sir.

Q. Have you seen it since?

A. Yes, sir.

Q. I wish to show you now a book marked on the front part of the cover "W. Davenport's Field Book, July 18, 1821" with the name W. D. Jones, and the date April 18, 1911, on the back, and containing the certificate of J. H. Beall, a Notary Public and examiner, under his seal, of date April 18, 1911, and ask you to examine that book (Handing book to witness) and see if it is the book that you have seen since your previous examination as the field book of William Davenport.

A. Yes, sir, it is the same book.

Q. When did you first see that book?

A. Saturday.

Q. Saturday last?

A. Yes, sir.

Q. Have you examined it with any care since you first saw it?

A. Yes, sir, I have looked through it carefully.

Q. Did you make any comparison between the calls in that book and the notes and plat which you had made of the survey of the portion of the state line between North Carolina and Tennessee in controversy in this suit?

A. Yes, sir.

Q. Have you made any plat showing the calls of this book, and the actual contention of North Carolina and the contention of the State of Tennessee about the location of that line?

955 A. Yes, sir.

Q. I wish you would produce that plat, please, and describe it as briefly as you can, so as to identify it.

A. The plat which I have made is marked "Complainant's Exhibit B. B." and labelled "Second Comparative Exhibit of the State Line between North Carolina and Tennessee from the 59th mile to the 101 mile." The date is May 1, 1911. Scale 800 poles to the inch. This map shows a comparison of four lines. The first one marked "Tracing of the line settled, run and marked by the Commissioners of 1821, as shown by their plat." That is merely a tracing off of the map that the Commissioners made in 1821. The second one is a plat of surveyed line claimed by North Carolina; that represents the line as surveyed by myself, by myself and Mr. Gannett. The third is plat of surveyed line claimed by Tennessee; that is also a surveyed line made by myself and Mr. Gannett, and the fourth is a plat of line made from Davenport's Filed Notes. There is a little note added to that. "River and creek sketched according to said notes."

Q. When you say "sketch" what do you mean?

A. I mean that there were no notes given in the field notes whereby the streams had been run out by actual courses and distances, but were only mentioned in connection with the line, and that I drew in the creek and the river according to said notes.

Q. Now comparing the plat made from the field notes of William Davenport in 1821 with the contention of the State of North Carolina as to true location, how do they tally?

A. You can scarcely detect any difference—practically nothing at all. They tally very closely.

Q. What difference, if any, do you find?

A. Well, there is in the actual—you mean in the actual survey?

Q. Yes, sir, on the actual survey as claimed by North Carolina on the one hand, compared with the field notes of William Davenport as the second, and the last of those, as diagram-ed on that plat, how do they compare?

A. Well, there is practically no difference whatever, and really the only difference that one could notice on that small scale
956 is running up the creek, the actual survey of the creek is more crooked than the line as surveyed by them, but the difference as measured by them and as measured by an actual survey, there is practically no difference at all.—I believe three hundredt-s of a mile in ten miles is my recollection.

Q. You spoke of a creek, what creek do you refer to?

A. The Creek I refer to is Slick Rock Creek on the surveyed line. I take that to be the creek that they call "creek" in their field notes.

Q. At what points on that creek do they agree, your survey as claimed to be the true line of North Carolina on the one hand, and the William Davenport field notes on the other hand?

A. Well, the field notes call to cross the Tennessee River to a large white pine on the south bank of the river at the mouth of a large creek—I believe was the wording of it—and the next call of the field notes says "Up said creek" and they speak about the 69th mile as being on the east side, or the east bank of said creek, and the 70th mile as being on the west bank of that creek, indicating clearly that they ran up said creek for a distance of five miles, and that is the distance, or very nearly the distance, that we find the line run and marked, and as claimed by North Carolina.

Q. The difference then, as I understand, is that the creek makes a few more winds than those field notes point out?

A. Yes, sir.

Q. Are those winds any considerable distance of any point from the line as marked down from the field notes?

A. No, sir, there would not be any great difference, the field notes would cross and recross those little bends.

Q. Now instituting a comparison, if you please, sir, between your work in surveying the line and the William Davenport field notes, I wish to ask you, in the first place, to take a position at the point north of the Tennessee River where the call begins which ends on the opposite side of the river; what is the course and distance there given in the field notes of 1821 of William Davenport?

A. The course that you refer to in your question is the course from the 64th to 65th miles, I take it. That course given
957 in the field notes is South 75° West. By actual survey, beginning at the 59th mile tree, and locating the 64th mile tree by following the undisputed line for a distance of five miles, and locating the 64th mile in that way and running thence South 75° West 320 poles, which is the course given by the field notes,

would take you near to the mouth of Slick Rock Creek on the south side of the river.

Q. Suppose you were to attempt to go to the mouth of Cheoah River from that point on that course, what would your direction be?

A. That direction would be southeast.

Q. Suppose you were to attempt to go to the point opposite the spruce pine near the bank of the Tennessee River, heretofore spoken of, what would your course be?

A. The course would be nearer to South, possibly South 20 or 30 degrees West.

Q. I notice that the course of this call of which you have just spoken does not carry you up and down the river but directly across, while the marked line, as you have heretofore testified to, would carry you directly to the river, and thence down from the river to a point opposite the mouth of Slick Rock Creek and across; how do you account for this difference between the marked line on the one hand and the William Davenport field notes on the other?

A. Well, I just attribute it to the careless way in which they did their work. They carried out that scheme all the way along, just to cite from prominent objects along the main mountain, and when they reached that point there where they could see across the river they just ci-ted to the mouth of Slick Rock, and when they measured and marked the line they followed down the ridge and along the Tennessee River because it was more accessible.

Q. On what facts do you predicate this explanation?

A. From the facts that courses given in the field notes both in the disputed and undisputed sections could not be made to conform to the exact top of the mountain, because the mountain has numerous small turns and winds in it, and could not be covered by the courses and distances given in the field notes.

958 Q. Do you notice in those field notes that an effort was made to expedite the survey without going into very minute details of every wind in the mountain?

A. Yes, sir, they show that on the face of it.

Q. What are the evidences of that on the face of the notes?

A. Well, I think that when they first began the survey they started out to do it more carefully. You find from the description of the notes, that the distances are very much shorter, running from ten to fifteen and twenty poles; actually they tried to follow the top of the mountain with them, but after they got farther along they seem to stretch out the distances, and they only read the needle every five degrees, showing that they did it in a hurry; and didn't try to conform exactly to the top of the mountain with the courses and distances, but they marked the line right on the top.

Q. How does this line that you have just spoken of as platted from the field notes of William Davenport tally with the plat found in the archives of the State of Tennessee of that survey at that point?

A. Well, it tallies almost exactly. I found two differences; one of them is between the 71-t and 72nd mile.

Q. I was inquiring about the particular line that crossed—the particular call that crossed the river?

A. I found no difference in that at all.

Q. Is there any other creek that empties into the Tennessee River on the southern side in that vicinity that you know of?

A. You mean coming in from the southern side?

Q. Yes, sir.

A. No, there is no other stream of any note there.

Q. What is the next stream above Slick Rock Creek?

A. Cheoah River.

Q. There has been something said about a creek called Yellow Hammer Creek; do you know where that is?

A. Yes, sir.

Q. Where does that lie?

A. It flows into the Cheoah River at about two thousand
959 feet from the mouth of Cheoah River.

Q. Above the mouth of Cheoah?

A. Yes, sir.

Q. How far does the body of it lie above Slick Rock Creek?

A. Well, the mouth of the creek about two miles or a little over from the mouth of Slick Rock Creek. It heads back next to Slick Rock Gap.

Q. How far from the mouth of Slick Rock Creek down the Tennessee River till you come to the next creek that empties into the Tennessee River? I mean on the Southern side.

A. Well, I can't answer that exactly. It is several miles. I never have been right along the Tennessee River immediately below the mouth to Slick Rock, to that next stream. I have been around the head waters of that stream. The first creek is called First Creek, is my recollection.

General Cates: What is that?

A. First Creek.

Q. Is called what?

A. First Creek.

By Mr. Sondley:

Q. The next call of the Davenport field notes, I believe, says "South 80 poles up said creek." The word "poles" being not written here, but we all know that is understood. How would that tally with the actual course of Slick Rock Creek for 80 poles up from its mouth to the Tennessee River?

A. It tallies almost exactly.

Q. The next call is "South 40° West 80 poles." How nearly would that correspond with the general course of Slick Rock Creek for the second distance of 80 poles?

A. That corresponded pretty close.

Q. How closely, if you can remember more specifically about it?

A. Well, as nearly as I could tell from the eye on the scale of the two maps the course corresponds. The distance in the field notes is possibly a little bit longer.

Q. The next call is "South 70° West 40 poles." How does
960 that correspond with the general course of Slick Rock Creek after you have passed the second distance of 80 poles from its mouth?

A. Well, there is a course from the actual survey of the creek about the same distance from the mouth of the creek that corresponds to the course given in the field notes.

Q. The next call is "South 60 poles." How would that correspond with the general course of Slick Rock Creek at the distance that, according to these field notes, it should be from the Tennessee River?

A. Well, there is a course in the actual survey of the creek that corresponds to that course very closely.

Q. The next call is "Due west 60 poles to a spruce pine, 66th mile." How would that correspond with the general course of Slick Rock Creek?

A. Well, there is a course in the actual survey of the creek that corresponds to that course.

Q. At the distance that this would make it from the river—Tennessee River?

A. At about that distance.

Q. Now the next call from the 66th mile is "South 65° west 80 poles." How would that tally with the general course of the creek at that point. The next above the 66th mile tree or where it should be?

A. Above the 66th mile tree.

Q. Yes, sir.

A. What is the course given.

Q. "South 65° West 80 poles."

A. That doesn't seem to be so very close.

Q. How close would you say that the general course of the creek is—I don't mean each specific turn.

A. With the general course of the creek it corresponds very close.

Q. Well the next is "South 20° West 60 poles." How would that correspond then with the course of the creek?

A. That corresponds very close.

Q. The next call is "70° West 40 poles." How would that correspond with the course of the creek at the distance which,
961 according to the notes, that should be from the river?

A. Well, there is a course in the actual survey that corresponds very closely to that course.

Q. Now the next is "South 70° West 1400 poles to a birch, the 67th mile at Cheogee path." How does that tally with the general course of the creek, Slick Rock Creek?

A. The general course is very close at that distance. From an actual survey is where the old trail passes through Slick Rock Gap, and across Slick Rock Creek, and goes over into the Tennessee country. I don't know whether it was ever called Cheogee path or not, but there is an old trail that goes through it, and it has been there for years and years.

Q. Right at that distance called for in the field notes?

A. Yes, sir.

Q. Now the next call then *is* from that Cheogee path is "West 140 poles." How would that tally with the actual course—the general course of Slick Rock Creek?

A. Well, from actual survey I have indicated three courses—in that distance the general course is practically the same.

Q. The next call is "South 15° West 180 poles to a sycamore, the 68th mile."

A. That course corresponds almost exactly within course and distance as near as I can discover from the eye from this scale.

Q. From the creek?

A. Yes, sir.

Q. The next call is "South 30° West 180 poles." How does that correspond with the creek, beginning at the 68th mile, and going on?

A. Well, in a general way it corresponds pretty close. It seems to be a sharper angle in the actual survey there than appears in the field notes.

Q. The next is "due west 20 poles." How does that tally with the creek, its general course?

A. What mile is that?

Q. That is between the 68th and 69th mile, and is the second call?

A. I can't make much out of it. It is such a small course
962 I can't quite locate it.

Q. Is it in the vicinity of the creek properly surveyed?

A. Yes, sir, it is in the vicinity of the creek properly surveyed.

Q. Now the next call is "South 35° West 120 poles to a maple on the east bank of said creek, 69th mile." How would that tally with the creek, Slick Rock Creek at the distance which it should be from the 69th mile, 120 poles?

A. The resemblance is not so striking at that particular point.

Q. To what extent is there a resemblance?

A. By the actual survey there is a sharp bend in the creek there. That shows that they seem to have cut across it some way in their field notes.

Q. Then starting with the 69th mile, the next call is "South 30° West 320 poles to the birch on the west bank of said creek, 70th mile."

A. That resemblance is very close, both as to course and distance.

Q. The next call, after the 70th mile, is "South 40 poles." How would that tally with the creek?

A. Well, that is very close.

Q. The next is "South 10° West 60 poles." How would it tally with the course of the creek?

A. Well, that is the point where it leaves the creek by actual survey.

Col. McCroskie: What is that?

A. The point where it leaves the creek. It corresponds with the call—the call in the field notes corresponds to the actual survey from where it leaves the creek, both in course and distance.

Q. Then up to that point, now from the Tennessee River the calls of the William Davenport field notes and the actual survey, accord-

ing to North Carolina's contention, are how closely together when summed up?

A. Well they are very close as to distance. They are almost exactly, but there is more angles in the actual surveys than is given in the field notes, but as to general course and distance they correspond closely as could be expected.

Q. When you say more angles you mean, I presume, that
963 you made a more minute survey of the body of the stream than the field notes?

A. Yes, sir, I mean that I made a more minute survey than the field notes.

Q. So that one of the field notes call- might call for several of your calls?

A. Yes, sir, that is the idea.

Q. I see that from these field notes some of the calls end at a tree on the east bank of that creek, and some at a tree on the west bank, or at least that occurs in one or two instances. What does your survey show up that creek according to the North Carolina contention that is contained in that record?

A. Well, we never—I never found any mile trees along Slick Rock Creek and I just merely followed the meanders of the creek where I found the line marked, a number of places up the creek, but as to any distinct—any particular mile tree as called for in the field notes, I did not find it.

Q. Suppose, now, Mr. Burns, you should take those calls which I have read to you from the Tennessee River up Slick Rock—up the creek, and should take the Cheoah River as the stream, would the first call from the river at the 65th mile South 80 poles up said creek going up Cheoah River?

A. No, sir, it would go away from it.

Q. In what direction?

A. Well the course of Cheoah River is about South 45° East. It would be about 45 degrees in error.

Q. Suppose that you were to concede that the end of that 80 poles to be the mouth of Cheoah River. You are really on the Cheoah River, and take the next course, South 40 West 80 poles, would that go up the Cheoah River?

A. It would be nearly at right angles to Cheoah River.

Q. But suppose you were to take for granted that at the end of that call you were on Cheoah River, and take the next call South 70° West 40 poles, would that go up Cheoah River?

A. No, sir, that would be directly away from it.

Q. But suppose you were to concede that at the end of that call you were at Cheoah River, and then take the next call South
964 60 poles, would that go up Cheoah River?

A. No, sir, it would go away from it.

Q. If however, we should take for granted that it did go with Cheoah River, and take the next call West 60 to a spruce pine, 66th mile, would that go up Cheoah River?

A. It would be almost the opposite direction.

Q. Suppose, however, you were to take the 66th mile as located on Cheoah River at the distance given for the 66th mile from the

Tennessee River in these notes, and then take the next call South 61° West 80 poles, would you go up the Cheoah River?

A. No, sir, you would go away from it.

Q. But if you were to concede then that you were on the Cheoah River at the end of that call, and then the next call South 20° West 60 poles, would that go up the Cheoah River?

A. No, sir, that would be away from it also.

Q. But if you should concede that you were on the Cheoah River and take the next call South 70° West 40 poles——

A. No, sir, it would still lead you away from Cheoah River.

Q. Suppose you should take the next call, assuming that you started on Cheoah River, and went South 20° West 140 poles to a birch, 67th mile, at the Cheogee Path, would you be on the Cheoah River?

A. No, sir, that would be away from the Cheoah River.

Q. Would you be at the Cheogee Path or any old path there?

A. No, sir, there is no old trail through there at all.

Q. Suppose, however, you were to assume that at that point you were on the Cheoah River, and take the next call West 140 poles, would that take you with the Cheoah River?

A. No, sir, it would be away from it.

Q. But if you should assume that you were at the end of that call on the Cheoah River and take the next call South 15° West 180 poles to a sycamore, 68th mile, would that go up the Cheoah River?

A. Still be away from it.

Q. Suppose, however, that you assume that the end of that 68th mile was on Cheoah River, take the next call South 30° West
965 180 poles, would you not go up the Cheoah River?

A. No, sir, still be away.

Q. If you should assume at the end of 180 poles, just mentioned, that you were on the Cheoah River, and take the next call, West 20 poles, would you go up the Cheoah River?

A. No, sir, that would be away from it.

Q. But if it were on the Cheoah River, now starting from there, and took the next call South 35° West 120 poles to a maple on the east bank of said creek, 69th mile, would that put you on the bank of Cheoah River?

A. No, sir, the course would take you away.

Q. If you assume, however, that that maple, just mentioned, was on the bank of the Cheoah River, and took the next call South 30° West 320 poles to a birch on the west bank of such creek, 70th mile, would you run with the creek?

A. No, sir, you would run from it.

Q. Now, Mr. Burns, suppose that you were to attempt to go up Cheoah River, and throw a corner first on one side and then the other for the distance for which the line follows the creek called for in these notes, would you have to cross the Cheoah River any other way than you would have to *cross* Slick Rock Creek?

A. Yes, sir. You can cross Slick Rock Creek on the stones most any place when the water is low, or when it is at its usual stage, you can cross it on rocks, but Cheoah River you can't cross that way.

You have to cross in a boat. Of course, there are places in the Cheoah that you can't cross with a boat; that you can't hardly cross at all. The stream is very, very rapid, and it would be dangerous to cross it in a great many places.

Q. Take these general courses which I have read to you, and which you trace up the Slick Rock Creek for me, and say whether or not they would tally with the line claimed by Tennessee?

A. No, sir they would not correspond at all.

Q. Would the difference be material or slight?

A. It would be very material.

Q. In what general respect would there be a difference?

966 A. Well the line that you would go from the plotting o the field notes, or from an actual survey up Slick Rock Creek would be South about 45 West, while for the same distance, accord ing to the Tennessee contention, it would be nearly south.

Q. Making then a general difference of forty-five degrees in th distance?

A. Practically forty-five degrees.

Q. How far is Slick Rock Creek along those points from th Cheoah River at an average distance?

A. The nearest point to Cheoah River is between two miles and mile and a half; and that is at the mouth.

Q. Now I notice in these field notes, the next call after the 70t mile, reads "South 40 poles" and the next "South 10° West 60 poles and the next "Due west 60 poles" and the next "South 30° Wes 200 poles to a pine, 71st mile." About where would that take you following the Slick Rock Creek as far as you said you followed th stream, and then following the North Carolina contention on up?

A. It would take you within about three-quarters of a mile fro the Big Fodder Stack.

Q. The next call, after the 71st mile, is "South 35° West 80 poles The next "south 80° West 160 poles," the next "South 30° We 80 poles to a white oak, 72nd mile on a ridge between the aforesai creek and Citico Creek." Would that 72nd mile according to tho notes put you between the waters of Slick Rock Creek and Citico Cree or not?

A. Yes, sir, it would. Awhile ago you asked me what differen I found in the field notes and the surveyed line, and I had forgotte the fact of that particular call that you just last read "South 3 West 80 poles." And to make that conform to the divide betwe Citico Creek and Slick Rock Creek, or conform to the top of th mountain, you would have to change it "South 30° East."

Q. Instead of "30° West?

A. Yes, sir, instead of 30° west. That also corresponds to th plat that they made very closely, and I assume that there must ha been an error in that call, in calling it west for east.

967 Q. When you say "that they made" whom do you ref to? The Commissioners of 1821?

A. The Commissioners; yes, sir.

Q. Now since you have spoken of that error, suppose you shou

run it South 30° East 80 poles, would you find a white oak at the 72nd mile point?

A. Well, there is a large white oak on the divide between the Citico Creek and Slick Rock Creek, just a short distance South from Big Fodder Stack that I remember from the time that I went over the line. I looked at it very carefully to see if I couldn't find old marks on it, but it was one of those kind of trees that the bark sheds off of, scaly like, and I couldn't detect any old marks on it, but I remember that there is a white oak tree that stands there; whether or not it was the original mile, I don't know. It corresponds in distance, and the description being on the divide between said creek and Citico Creek, that might be the 72nd mile.

Q. Suppose you were to take "South 30° West" as called for her-, as being the line, would that run with the ridge or leave the ridge?

A. That would take you down on to the Citico side.

Q. Well South 30° East runs with the ridge itself?

A. Yes, sir, along the top of the ridge.

Q. Now Citico Creek is in what state as conceded?

A. Tennessee.

Q. And on the side of a man going southwest along the line, would that be to his right or left?

A. To the right.

Q. Suppose you were to take Cheoah River and attempt to follow it from its mouth by the courses which I have read to you at the end of the 72nd mile, would you be on any ridge dividing the waters of Cheoah River and Citico Creek?

A. I don't quite catch the meaning of your question. You mean to follow Cheoah River for five miles.

Q. Yes, sir, follow the Cheoah River? It is seven miles.

A. Well, five.

Q. Seven miles. Up from the 72 to the 75th, suppose you
968 should go up the Cheoah River for seven miles?

A. Yes, sir.

Q. I mean starting up it and taking seven miles according to these courses to the land on the top of any ridge between the waters of Citico Creek and Cheoah River, would that land you on a ridge at all, those calls.

A. Which I run myself?

Q. On the plat.

A. You mean to start at the mouth of Cheoah River?

Q. Start up it and take these calls.

A. Well, you see those calls were up the crest——

Q. I say start as if you were going up and then take those calls would the calls land you on a ridge between Cheoah River and Citico Creek. Suppose you were to start at the mouth of Cheoah River and take the calls which I have read here after the 65th mile, and on to the 72nd mile, and follow them would they bring you on a ridge between the waters of Citico Creek on the one hand and Cheoah River on the other; or would it bring you on a ridge at all in other words?

A. I don't think it would.

Q. Suppose that you were to take the road claimed by Tennessee or the way up HangOver and start up with these calls, and then attempt to pursue these calls, could you follow the line claimed by Tennessee with these calls?

A. No, sir, not at all.

Q. But if you should go up there on the Hang Over Road, as claimed by Tennessee, and the end of the mile from the Tennessee River, would you be between the waters of Slick Rock Creek and of Citico Creek?

A. No, sir, you would be on the waters between Slick Rock Creek and Santee Creek. There is no point on the line as claimed by Tennessee in the disputed section that is on the dividing waters of Citico Creek.

Q. I note then that starting from the 72nd mile, the next call of the field notes of William Davenport is "South 30° East 200 poles," next "South 60° East 120 poles to a red oak, 73rd mile;"
969 next "South 100 poles" next "South 45° East 100 poles" next "South 10° West 120 poles, maple, 74th mile;" next South 25° East 160 poles" and next "South 10° East 160 poles Leech, 75th mile, main mountain." Where would that take you according to the North Carolina way?

A. It would take you to the junction.

Q. Distance and course take you there?

A. Yes, sir.

Q. Suppose you should take, however, the way up Hang Over and go those distances from the 65th mile to the 75th would it take you to junction?

A. It would take you beyond the junction.

Q. How far?

A. Something like a mile and a half is my recollection.

Q. Suppose you should take it and go up Cheoah River for the distance between the 65th and the 75th mile; would you get to any main ridge that way starting up the Cheoah River?

A. No, sir, if you would go up Cheoah River the same distance that you would go the creek that they call for in their field notes, assuming Cheoah River to be that creek, and go up it a distance of five miles then you would be something like ten miles from the nearest point on the dividing water of Citico Creek. While, by going up Slick Rock Creek, you could reach the divide between Slick Rock Creek and Citico Creek in the distance called for in the field notes.

Q. Suppose you should go up the Hang Over ridge to the end of the 67th mile, would that put you on an old path?

A. Well, you would cross that path going through the Slick Rock Gap.

Q. At what distance from the 65th mile?

A. It would be about, from the 65th mile, it would be something like a mile and a half.

Q. You would cross it through a mile too soon according to the calls of these field notes?

A. Yes, sir.

Q. Now, as I understand you, at the point junction and from

that on some little distance there is no error as to the location of the state line between the two states?

970 A. No, sir.

Q. How do you find that these calls in the William Davenport field notes, which I have read, correspond with the Commissioner's map of 1821?

A. I only found three places where they differ at all.

Q. Where were those places, if you please, sir, and what was the difference in each?

A. The first difference I found was between the 11th and 12th miles; the field notes call for South 30° East 154 poles.

Q. Wait a minute.

A. 11th and 12th miles, and the field notes has a call in that mile of South 30° East 154 poles to make it correspond with the plat you would have to plat it South 30 West 154 poles.

Q. Is that in the territory where the line between the states is conceded to be by both the same or where it is controverted?

A. It is conceded to be the same by both states at that point as far as I know.

Q. Then coming to the next difference which you found.

A. Is between the 71st and 72nd mile.

Q. That is the one of which you have heretofore spoken?

A. The one I spoke of a while ago.

Q. What is the next you found?

A. Between the 95th and 96th mile.

Q. What would you have to do there to make the two tally?

A. There is one call in that mile in the field notes South 45° West 80 poles, and you would have to plat North 45° West 80 poles.

Q. Is that in disputed territory or where the line is conceded by both states to be the same?

A. By both states to be the same at that point.

Q. Now in regard to the point where the creek at the mouth of which the line crosses the Tennessee River is platted into that plat of 1821, these field notes show that you go up that creek from the 65th mile tree.

A. Yes, sir.

971 Q. Five miles, whereas that plat seems to show by its scale that you don't go up it so far. I wish you would please tell us what you know about that

A. Well, I think it was just carelessness in sketching the topography on the map on the part of the commissioners, or whoever made the plat for them.

The defendant objects to the statement of the witness because it is a mere supposition, and the opinion of the witness; if he has any personal knowledge upon the question he may state that, but we except to his opinion and argument from the map and the field notes.

A. It is an evident fact from the field notes that they went up said creek for five miles, while the plat only shows the creek for about a mile and a quarter or a mile and a half.

Q. Did you reach that conclusion before you ever heard of the William Davenport Field Notes?

A. Yes, sir, that has always been my theory in regard to that.

Q. Had you testified that in this case before you ever heard of the William Davenport field notes?

A. Yes, sir, several times.

Q. Then as I understand you the William Davenport field notes corroborates a theory that you had formed on the ground?

A. Yes, sir.

Q. In that respect?

A. Yes, sir.

Q. And formed before you ever heard of the notes?

A. Yes, sir.

Q. And testified to before you ever heard of the notes?

A. Yes, sir.

Q. Now let us come to this controversy in the neighborhood of Tellico River. Have you compared the field notes of William Davenport in this book with the claim of North Carolina as to the location of that portion of the line that crosses Tellico where there is a dispute between the two states?

A. Yes, sir.

972 Q. Which contention, if either, does the William Davenport field notes correspond with?

A. Corresponds to North Carolina's contention.

The defendant objects to the statement of the witness because same is a mere opinion and inference drawn from the two papers and is a deduction of his own, and the matter is for the determination of the court and not the witness.

Q. If you plat the William Davenport field notes and plat the North Carolina contention as you survey there for that territory, is there any difference between the two?

A. No perceptible difference.

The defendant also objects to the statement of the witness because it is a mere opinion of his, and a deduction from the papers prepared and made by himself.

Q. I see from the William Davenport field notes that at the end of the 86th mile it says "a holly tree 86th mile near the head of the middle fork of Tellico River." Did you ever see that holly that North Carolina claims is the 86th mile tree there?

A. Yes, sir.

Q. When did you see it, and what did you see?

A. I saw it about a year ago. The holly tree stands just a short distance from the middle prong of Tellico River and the holly is marked with the figure 8 and the figure 6, and also underneath that with the letter "M". The figures represent the number 86, but there is a kind of decayed or burnt place on the tree that destroys a part of the six and a part of the "m", but there is enough of it there now to indicate the figures 86 and the letter "m."

Q. Had you seen that there before you ever heard of the William Davenport field notes?

A. Yes.

Q. Had you testified about the marks on it in this case before you ever knew of the William Davenport field notes?

A. Yes.

973 Q. Now you have, I believe you have heretofore stated that you have gone around the head of Tellico in accordance with the Tennessee contention on the line at that place?

A. Yes, sir.

Q. Was there, that you could find anywhere, on that line a holly tree in that line?

A. No, sir.

Q. Did you ever see any other holly tree in that country anywhere marked with any mark to show that it was a state line mark?

A. No, sir.

Q. Is that holly that you saw that lies on the North Carolina contention, just after crossing Tellico River, actually the 86th mile tree according to your survey there, if you assume the North Carolina contention to be a correct one; in other words, would it be if you started at the Tennessee River as the 65th mile—the Tennessee River—would that be the 86th mile's end?

A. I think there is a difference of something like between a quarter and a half a mile, is my recollection. I have the exact figures, but I don't remember them now, of the distance from the Tennessee River to the 86th mile, but assuming that to be the 86th mile it corresponds with the plat that the commissioners made, and also with the field notes. The difference in the distance as measured by me, and as measured by them must have been a cumulative error on their part mostly.

Q. Suppose, Mr. Burns, you take the general direction, the shape of the North Carolina contention, at the controverted point as to the location of the state line, and then the shape of a plat made according to the Davenport field notes of those points, would there be a resemblance or not, and if so how close?

A. Yes, sir, the resemblance is so striking that you cannot scarcely detect any difference whatever with the eye on a scale the size of this plat.

Q. How would that resemblance correspond with the resemblance shown by the plat of 1821 at this point as to shape?

A. The same resemblance would appear in that case also.

974 Q. Suppose on the other hand you take the Tennessee contention, and how would that correspond with a plat made of those points of controversy from the Davenport field notes?

A. There is no resemblance at all.

Q. Suppose you take the Tennessee contention and compare it with the plat of 1821 as to those particular points, how would that be?

A. There is no comparison in those. They do not look anything at all alike.

Q. Then has the effect of the William Davenport field notes been

to confirm the North Carolina theory or antagonize the North Carolina theory?

A. To confirm it.

Q. Has it been consistent with the Tennessee theory or inconsistent with it?

A. Inconsistent.

The defendant objects to the several answers of the witness to the last six questions as being merely opinions upon his part and deductions, and an attempt to state matter that is for the determination of the court.

Q. Except in the particulars of difference that you have mentioned, do the William Davenport Field notes on the one hand and the map of 1821 agree or disagree?

A. They agree.

The State of North Carolina introduces map marked "Complainant's Exhibit BB" which is filed and Marked "Exhibit 2, G. A. T."

Q. In the previous part of your examination had on other occasions in this case something was said about a call for an Indian path, or about a marked Indian path in the southern end of the line between North Carolina and Tennessee as shown on the plat of 1821, and which purported, according to the report, I believe, of the commissioners to show that that path ought to have been reached at the end of the 93rd mile, although, I believe, that something was stated about it leaving the path at a greater distance than that, at
975 about the 95th mile, is my recollection; do you recall the circumstance to which I refer?

A. Yes, sir.

Q. Now I want to ask you, in the light of these William Davenport field notes about that matter, and I find here a call in those field notes which reads this way: "North 45° West, 40 poles, red oak, 93rd mile to the trading path leading from Valley Town to the settlements, and the next call is North 45° West 80 poles; South 80° West 120 poles; North 25° West 120 poles to a white oak, 94th mile on said path, North 40° West 320 poles, white oak 95th mile on said path." And there is no call thereafter for that path in the William Davenport field notes that I can find. What does that show in regard to that path?

A. Well the path as shown on the original map of 1821 as coming to the line, about the 93rd mile, and running with it for two or three miles, and then leaving it, and those notes would correspond to the way in which it has been platted on the original map.

Q. Of 1821?

A. Of 1821.

Q. And I believe that there are some copies of the map of 1821 that did not show on the map of 1821—some copies of the map of 1821—if you please sir—that did not show that the path did approach on the eastern or southern side, the mountain top, at the 93rd mile, but the original which you examined did show that?

A. Yes, sir.

Q. That is, I believe, all, gentlemen, that I wish.

Cross-examination.

By CHAS. T. CATES, JR., Attorney General:

Q. Mr. Burns, I will ask you to please designate by numbers these different tracings from one to four so that they may be referred to hereafter more conveniently than by giving the entire statement of the description of each one of them. Don't put it with that pen. Put it in with that kind of ink (indicating).

976 A. I will do so as requested.

Q. Now as I understand you Number One purports to be a tracing taken from the state *mpa* found among the Tennessee archives at Nashville?

A. Yes, sir.

Q. But you didn't show on this tracing any part of the Tellico river, did you?

A. No, sir.

Q. I will ask you at the adjournment to trace the head of the Tellico River on this number one as it appears on the copy of the map of 1821 from which you made this tracing number one.

A. I will do so.

The State of North Carolina objects to defacing its exhibit by undertaking to show the contention of the State of Tennessee in a matter not relative to the exhibit, and when that contention is shown by the original plat itself of the map of 1821, it being one of the controverted points in this matter as to where Tellico River does run, and the map of 1821 speaks for itself, and this map "Exhibit BB" is simply designed to show the tracing of lines and not the location of streams.

Q. Mr. Burns, as pertinent to the last ground of objection stated by counsel appearing for North Carolina, you did show on this tracing the location of the stream marked a creek, east of the boundary line, did you not, in other words——

A. Yes, sir.

Q. In other words you did trace into this sketch number one the stream east of the boundary line and between it and the Tennessee River which is marked a creek, did you not?

A. Yes, sir.

Q. And you ignored the Tellico River as it appears in that map of 1821 altogether in this tracing number one, did you not?

A. Yes, sir.

Q. And it would be an easy matter for you to lay down the lines of Tellico River as they appear on the map of 1821 in connection with this sketch number one, wouldn't it?

A. Yes, sir.

977 Q. And the entire head waters of the Tellico River as shown on the map of 1821 appearing altogether west of this line?

A. Yes, sir, rather Northwest.

Q. North and west?

A. Yes, sir.

Q. Why didn't you put the head waters of Tellico River on this map in connection with this sketch number one?

A. Because the purpose of it was just to show the lines themselves, not the topography.

Q. But you did sketch in this stream marked a creek east of the line?

A. Yes, sir.

Q. Did you not?

A. Yes, sir.

Q. Did you have any instructions to leave off Tellico River?

A. No, sir.

Q. I see that in connection with sketches number- two and three you do portray something in reference to the Tellico River, do you not?

A. Yes, sir, I sketch in the head waters of it.

Q. Then why didn't you sketch in the head waters of Tellico River in connection with number one?

A. Because it was only to show the comparison with the lines.

Q. Wasn't it because copying this map of 1821 just as it appears would show all of the head waters of Tellico River north and west of that line, wasn't it?

A. No, sir, it was not for that reason that I didn't show it. If I wanted to show the whole map of 1821 I would have sketched all the etching and everything else on it. The mere purpose was to show the lines, and the comparison of the lines.

Q. Do you object to putting that Tellico River on that?

A. Personally, I do not; no, sir.

Q. Then I will ask you to put it on?

The State of North Carolina objects to the State of Tennessee attempting to make the exhibits of North Carolina the exhibits of the State of Tennessee, and says that if it wants a map to show
978 these facts they are at liberty to have one made for themselves.

Q. Now, Mr. Burns, I also ask you to portray the head waters of Tellico River in connection with this sketch number four appearing on this exhibit of yours "BB."

The State of North Carolina objects on precisely the same ground as to the request of the State of Tennessee on exhibit four.

A. Yes, the stream placed upon that was merely taken from the field notes, and I did not associate sketching those streams with my knowledge of the streams as they were in the field, or try to imitate the streams as they were in the field, and I could not attempt to sketch on the head waters of Tellico only from my personal knowledge of the country and of the field notes; that was not the purpose of Number four on that exhibit.

Q. You did sketch on this sketch number four when platting the line made from Davenport field notes what you say is Slick Rock Creek, did you not?

A. Yes, I believe the creek to be Slick Rock Creek, but I didn't

call it Slick Rock Creek on number four. I merely marked it "creek."

Q. Well, you did sketch a stream?

A. Yes, sir, because they call for a stream for five miles.

Q. Now at the end of the 86th mile called for in Davenport's alleged field notes we find the following tree "holly tree, 86th mile near the head of middle fork of Tellico River." There is a call for Tellico River, isn't there?

A. Yes, sir.

Q. Why didn't you sketch in Tellico River there?

A. Because it is not definite. It doesn't mention crossing Tellico River and it doesn't say which side of the line Tellico River is. It isn't definite enough to put it on.

Q. Doesn't say anything about the head waters of this stream that you have called a creek there, either does it?

A. No, sir, but it mentions about a tree at the 69th mile being on the east bank and a tree is on the west bank of said creek at the 70th mile, which indicates that they crossed the river between the
979 69th and 70th mile, and they do not mention being on the creek at any point after that, and they run on to the 72nd mile where they speak about being on the divide between said creek and Citico Creek, and then at the 75th mile they speak of the main mountain, which clearly shows that the spur that they run up after leaving said creek comes to another range of mountains, and one would naturally suppose that the creek must have headed up pretty close to that point where they call the main mountain. It was only that in my mind when I sketched in that creek, adding a few prongs to indicate that they were prongs, but I didn't try to show any of the prongs of Slick Rock Creek. Just merely to show that it was a stream that headed in that way.

Q. Are you through?

A. Yes, sir.

Q. Now, excepting to the argument of the witness, I desire to ask him if the head waters of Tellico River if you had laid them down on this sketch number four, in connection with your alleged copy of Davenport's field notes, wouldn't have appeared to the east of that line?

A. No, sir, not unless I associate my knowledge of the country; just the mere fact that they mention Tellico River at the 86th mile, I wouldn't know whether the Tellico was on the east side or the west side of the line, only from my knowledge of the country.

Q. You say you assumed, and according to your theory the 86th mile is about that holly tree; is that correct?

A. Comparing my actual survey with the map of 1821 and the field notes.

Q. To reach that holly tree you must cross Tellico River, must you not?

A. That is true.

Q. Then the head waters of Tellico River are to the east of that line by actual survey?

A. That is true; yes, sir.

Q. And at least as much of Tellico River would be east of that Davenport line as is shown on sketch number two, which I believe you say is a sketch of the line as actually run by you; is that correct?

980 A. Yes, sir.

Q. Now then, Mr. Commissioner, I ask you to rule upon my request for the witness to put on sketch number one and on sketch number four the head waters of Tellico River.

The State of North Carolina objects to any ruling on the subject; that it is a question for the Court, and says, further, that wherever the *the* witness has undertaken to plat an actual survey according to his knowledge he has—that the witness testified that wherever he actually sketched from personal knowledge, that wherever he made the diagram from personal knowledge he sketched Tellico River in as to its head waters, but where he purported to make a diagram of something that did not direct him to put in Tellico River he put it in according to the line.

Mr. CATES: Now, Mr. Commissioner, you rule on it.

COMMISSIONER: As I understand, the Commissioner has no authority to rule, and I therefore decline to rule on the question.

The Defendant, State of Tennesee, excepts to the ruling and action of the Commissioner.

Mr. SONDLEY: The State of North Carolina has not the slightest objection to this witness making a separate plat for the State of Tennessee that copies the plat of 1821 if they desire it.

Q. Mr. Burns, where is the exhibit to your original deposition which showed the line as run and surveyed by you from Tennessee River around to the 101 mile tree, or as far as you ran it?

A. You mean the large map?

Q. Yes.

A. It is at my office.

Q. Bring it down here at the meeting after adjournment. I will ask you another question. Have you here with you your field notes of your running of that line from the 59th mile to the mile tree, around to the 101 mile, or as far as you ran it?

981 A. They are at my office also.

Q. Bring them down also at the meeting after adjournment.

Hearing adjourned until two o'clock P. M.

Pursuant to adjournment, hearing resumed at two o'clock P. M. May 1, 1911, in the District Court room of the United States for the Western District of North Carolina.

Appearances:

For the State of North Carolina: Mr. G. L. Jones, Assistant Attorney General of North Carolina, Messrs. Theo. F. Davidson, F. A. Sondley and W. B. Councill, counsel.

For the State of Tennessee: Hon. Charles T. Cates, Jr., Attorney

General of the State of Tennessee, and Mr. T. E. H. McCroskie, Jr., counsel.

Q. Now, Mr. Burns, I asked you before adjournment for your field notes.

A. Yes, sir.

Q. And of your actual survey beginning at the 59th mile tree, have you brought them?

A. Yes, sir.

Q. Were you ever at the 59th mile tree?

A. No, sir. I only surveyed from the road where the road crosses the Smoky Mountain. Mr. Gannett surveyed that portion between the Smoky Mountain road where it crosses the state line and the 59th mile tree.

Q. Then you don't know whether the 59th mile tree is actually standing or not?

A. No, sir, I never have seen it.

Q. You say you began your survey at the road, you mean the turnpike road?

A. The turnpike road where it crosses the Smoky Mountain about three miles and a half north of the Tennessee River.

Q. Now that turnpike road is supposed to be the old trail
982 leading from Equineetly to Tellassee?

A. Personally I don't know. I have heard it said that the road crosses there at the same place, but I don't know.

Q. How far do you say that old road or path is from the river?

A. It is about three miles north of where the state line comes to the river. It is three miles and a half north of the mouth of Slick Rock Creek.

Q. The road or path crosses through a deep gap or depression there in the mountain, doesn't it?

A. Yes, sir.

Q. About the natural place for a cross way?

A. Yes, it is a natural place.

Q. Now then you say that between that road or path and northward to the 59th mile Mr. Gannett surveyed?

A. Yes, sir.

Q. And you have simply adopted his calls?

A. Yes, sir.

Q. Now beginning at the 59th mile tree calls, Gannett's calls down to that turnpike road or old path.

A. (Referring to book) South 25° 50′ West 190 feet.

Q. Now that is beginning at the 59th mile tree?

A. Yes, sir.

Q. As Gannett calls there—does the book from which you read give any description of the 59th mile tree?

A. No, sir, I just have in this book the courses and distances and the traverse lines.

Q. All right now proceed with the calls after the one you have given.

A. South 43° 55′ 35″ West 472 feet;
South 60° 58′ 55″ West 212 feet;

South 83° 18′ 42″ West 344 feet;
South 82° 32′ West 235 feet;
South 55° 5′ 47″ West 561 feet;
South 32° 31′ 35″ West 545 feet;
South 51° 24′ 25″ West 424 feet;
983 South 43° 58′ 57″ West 284 feet;
South 40° 20′ 30″ West 520 feet;
South 45° 52′ 47″ West 332 feet;
South 30′ 10″ East 410 feet;
South 6° 58′ 6″ East 191 feet;
South 2° 26′ 42″ West 1367.6 feet;
South 65° 58′ West 149 feet;
South 47° 6′ 5″ West 516 feet;
South 62° 8′ 15″ West 264 feet;
South 74° 42′ 15″ West 155 feet;
South 53° 2′ 15″ West 579 feet;
South 25° 22′ 15″ West 134 feet;
South 15° 59′ 15″ West 637 feet;
South 28° 52′ 30″ West 783 feet;
South 35° 43′ 51″ West 517 feet;
South 31′ 51″ East 297.5 feet;
South 5° 31′ 57″ West 463 feet;
South 2° 40′ 30″ West 450 feet;
South 17° 21′ 33″ West 451 feet;
South 41° 1′ 6″ West 93 feet;
South 43° 45′ 39″ West 511 feet;
South 17° 49′ 27″ West 437 feet;
South 34° 30″ West 246 feet;

Q. Are you still reading from Mr. Gannett's survey?

A. Yes, sir, the last call takes me to where my survey commenced

Q. Have you finished?

A. Just finished; that was the last call.

Q. Now, do I understand you that to take you to where you began?

A. Yes, sir.

Q. At that path or turnpike road?

A. At the road; yes, sir.

Q. Now give us the call and distance of your actual survey down to the river.

984 A. Yes, sir, I will give them to you. They are in evidence. Mr. Gannett furnished you with a copy of the whole thing in Washington of my field notes. If you want them in again I will read them off again. A typewritten copy of all my field notes are in evidence.

Q. Put them in right there.

A. Do you want them in again, did you say?

Q. Yes.

A. South 73° 30′ West 380.2 feet.

Q. Now that begins——

A. That is the next call after Mr. Gannett's.

Q. Yes, all right.

—. South 60° 43½′ West 125.4 feet;
South 52° 18′ West 1,304.4 feet;;
North 72° 19′ West 490 feet;
South 57° 34′ West 450 feet;
North 63° 18½′ West 365 feet;
North 72° 23′ West 745 feet;
South 83° 42′ West 539.7 feet;
South 34° 25½′ West 198.7 feet;
South 82° 52½′ West 531.6 feet;
South 54° 14′ West 370 feet;
North 75° 17½′ West 550 feet;
South 76° 15½′ West 550 feet;
South 69° 28½′ West 200 feet;
South 85° 32′ West 400 feet;
South 71° 35′ West 670 feet;
South 66° 21′ West 500 feet;
South 10° 59′ West 200 feet;
South 63° 7′ West 150 feet;
South 27° 44′ West 450 feet.

Q. Mr. Burns, when you get to that fore and aft hemlock on the north bank of the Tennessee River stop.

A. All right.

South 51° 52′ West 580 feet;
985 South 56° 3′ West 260 feet;
South 45° 13½′ West 390 feet;
South 65° 48½′ West 150 feet;
South 26° 22′ West 220 feet;
South 16° 12′ East 260 feet;
South 52° 44½′ West 390 feet;
South 17° 48½′ East 590 feet;
North 73° 47½′ West 380 feet;
South 76° 27½′ West 610 feet;
South 66° 20½′ West 450 feet;
South 15° 7½′ West 350 feet;
South 59° 33½′ West 680 feet;
North 67° 51½′ West 470 feet;
South 49° 24½′ West 790 feet;

That takes us to the fore and aft spruce pine; that takes us fifteen feet beyond the spruce pine; fifteen feet shorter than that is the spruce pine if you want the exact distance it is.

Q. Now you say that last call brings you to the marked hemlock or spruce pine on the north bank of the river and opposite the point on the Hang Over Lead where Tennessee claims the boundary line to run?

A. Yes, sir, takes us fifteen feet beyond that; take fifteen feet off the distance to take you there.

Q. Now give us the courses and distances beyond that marked fore and aft spruce pine or hemlock going toward Slick Rock Creek of your survey.

A. Clear down to the mouth of Slick Rock?

Q. Yes.

A. The next is:

South 79° 11′ West 135 feet;
North 38° 27½′ West 285 feet;
North 26° 43′ West 295 feet;
North 22° 18½′ West 385 feet;
North 56° 42′ West 619 feet;
North 78° 55½′ West 361 feet;
985½ North 78° 50′ West 242 feet;
South 85° 11′ West 372.2 feet;
South 76° 29½′ West 276.5 feet;
South 48° 51′ West 328.7 feet;

That takes you to the mouth of Slick Rock Creek.

Q. On which bank of the river?

A. On the south bank.

Q. Where is the end of the call South 76° 29½′ West 276.5 feet?

A. That is on the other side of the river, the north side opposite the mouth of Slick Rock.

Q. So then the call South 76° 29½′ West 276.5 feet ends at a point on the north bank of the Tennessee River opposite the mouth of Slick Rock Creek?

A. Yes, sir.

Q. And the call South 48° 51′ West 328.7 feet carries you from that point referred to in the last question on the north bank of the river across the river to a point on the southern bank just below the mouth of Slick Rock Creek?

A. Yes, sir.

Q. Then the river at that point you say is 328 feet wide?

A. Yes, sir, the way I crossed it there, it is that wide.

Q. Yes, sir. Now what is the difference in degrees between the angle at which you crossed the river as you have just stated and the call in these alleged Davenport field notes crossing the river?

A. 26° 9′.

Q. Now then go back up there to the call which reached the river at the marked fore and aft pine, spruce pine or hemlock, which I believe you said was South 49° 24½′ West, and what is the difference between that call—that is the course of that call, and the course of the call by which Davenport says he crossed the river?

A. 25° 35½′.

Q. In other words, the course as marked on the ground approaching the river at the marked fore and aft spruce pine or hemlock is South 49° 24½′ West, while Davenport, according to these
986 field notes, approached the river at South 75° West?

A. Yes, sir.

Q. And at this point there is a difference between the marked line and the call in these alleged field notes of 25° and how many minutes—35½′?

A. You have it calculated there.

Q. 25° 35½′?

A. Yes, sir.

Q. Now, Mr. Burns, proceed with the courses and distances of your survey from that point on the south side of the river just below the mouth of Slick Rock Creek, called for in the last call given by you above.

A. Yes, sir.

South 16° 28′ East 285.6 feet;
South 11° 7′ West 365 feet;
South 10° 31′ East 581 feet;
South 30°——

Q. Wait a minute. To what point did this last call carry you—to what point did this last call carry you according to the notation in your field notes?

A. Well, I don't know how to designate it. It is just a point on the creek. You would have to add up all the courses that I gave you the last time to get how many feet it is from the mouth of the creek.

Q. Then your notes don't call for any specific point?

A. No, sir, just stakes along.

Q. Just a stake on the creek?

A. That is all.

Q. Well, that is what I was trying to get at?

A. Yes.

Q. Well, go on now.

A. South 30° 33′ West 375 feet;
South 61° 37′ West 530 feet;
South 4° 26½′ East 704 feet;
South 82° 26½′ West 385 feet;
North 73° 6′ West 359 feet;
South 10° 10′ West 276 feet;
987 South 42° 14½′ East 466.4 feet;
South 33° 30½′ West 197.6 feet;
North 68° 13½′ West 96 feet;
North 73° 37½′ West 870 feet;
North 85° 43′ West 395 feet;
North 87° 28′ West 596 feet;
South 47° 31′ West 137 feet;
South 15° 2½′ West 444 feet;
South 7° 20′ West 198 feet;
South 26° 45′ West 224 —;

Q. Now just wait there a minute.

A. South 85° 22½′ West 253 feet;
South 4° 32′ East 995 feet;
South 2° 21′ West 598 feet;
South 25° 20½′ East 340 feet;
South 78° 44′ West 390 feet;
North 62° 12′ West 123 feet;
North 59° 1½′ West 95.3 feet;
South 57° West 661.2 feet;
North 58° 1½′ West 960.9 feet;
South 82° 12½′ West 302.2 feet;
South 19° 34½′ West 711.4 feet;

South 30° 56½′ West 363 feet;
South 29° 8′ West 283 feet;
South 30° 52½′ West 400 feet;
South 26° 6½′ West 76.7 feet;
South 20° 14′ West 388.3 feet;
South 12° 13′ West 188.7 feet;
South 14° 14½′ West 470.3 feet;
South 48° 54½′ West 129.7 feet;
South 49° 11′ West 269.6 feet;
South 86° 11′ West 332.4 feet.

Q. Mr. Burns, let me interrupt you there for a moment, and ask you when you get to the point where you leave Slick Rock Creek please state.

988 A. North 56° 47½′ West 249.3 feet;
North 57° 29½′ West 94.8 feet;
North 52° 14′ West 200.2 feet;
South 79° 41′ West 213 feet;
South 35° 8′ West 269.4 feet;
South 10° 16′ East 269.4 feet;
South 53° 13′ West 169.4 feet;
North 75° 48½ West 160.3 feet;
North 58° 45½′ West 100.4 feet;
North 46° 43′ West 440.5 feet;
North 76° 39′ West 385.2 feet;
South 28° 22½′ West 526.6 feet;
South 6° 26′ West 552.1 feet;
South 44° 27′ West 180.6 feet;
South 51° 32′ West 354.6 feet;
South 7° 2½′ West 656.7 feet;
South 56° 4′ West 923.1 feet;
South 82° 23′ West 482.7 feet;
South 81° 36′ West 120.6 feet;
South 18° 44′ East 817.6 feet;
South 14° 9½′ West 619.9 feet;
South 14° 37½′ West 379.6 feet;
South 13° 43½′ West 182.1 feet;
South 14° 17½′ West 873.9 feet;
South 14° 41½′ West 96.1 feet;
South 14° 20′ West 547.2 feet;
South 14° 27½′ West 279 feet; that is where I left creek.

Q. Now then proceed with the calls toward Big Fodder Stack Ridge.

A. It would be the same course as the last.
South 14° 27½′ West 131.5 feet;
South 26° 58½′ West 761.1 feet;
468.9
North 72° 59′ West 486.9 feet;
South 72° 32′ West 532.8 feet;
989 South 35° 1½′ West 170.7 feet;
South 13° 4′ West 476.4 feet,
South 52° 34′ West 866.6 feet;

South 23° West 64.3 feet;
South 45° 19′ West 127.7 feet;
South 62° 42½′ West 526.8 feet;
South 30° 39′ West 181.8 feet;
South 29° 50½′ West 337.4 feet;
South 62° 54½′ West 376 feet;
South 9° 5½′ West 177 feet;
South 37° 39′ West 166.3 feet;
South 26° 4½′ West 302.7 feet;
South 29° 15′ West 335 feet;
South 42° 23′ West 104 feet;
South 58° 23′ West 814 feet;
South 78° 59′ West 510.6 feet;
North 73° 26′ West 559.6 feet;
North 53° 50½′ West 272 feet;
South 86° 21′ West 279.8 feet;
South 75° 19′ West 147 feet;
North 86° 57′ West 207.4 feet;
South 60° 16′ West 345 feet;
South 14° 29½′ East 138.9 feet;
South 8° 53½′ East 543.2 feet;
South 28° 15½′ East 1332.5 feet;
South 11° 12½′ West 811.6 feet;
South 34° 50′ East 510.7 feet;
South 29° 40½′ East 169.9 feet;
South 23° 20′ East 1070.3 feet;
South 41° 18½′ East 311.5 feet;
South 60° 38½′ East 357.3 feet;
South 83° 22′ East 454 feet;
South 60° 2′ East 489.7 feet;
South 37° 57½′ East 207 feet;
990 South 10° 9½′ East 574 feet;
South 9° 5½′ East 589 feet;
South 21° 34′ East 196 feet;
South 2° 41′ East 675.6 feet;
South 47° 50½′ East 333.7 feet;
North 82° 5½′ East 150.5 feet;
North 80° 40½′ East 253.2 feet;
South 67° 14½′ East 653.5 feet;
South 40° 33′ East 134.1 feet;
South 5° 27′ East 301.4 feet;
South 20° 29′ West 434.6 feet;
South 33° 45½′ West 363 feet;
South 33° 52′ West 442 feet;
South 26° 5′ West 205.4 feet;
South 6° 21½′ West 60.8 feet;
South 17° 37½′ West 516.6 feet;
South 13° 56′ West 139.6 feet;
South 21° 45′ East 325.2 feet;
South 42° 15′ East 326.6 feet;
South 40° 47½′ East 327.2 feet;

South 7° 15½′ East 336.2 feet;
South 22° 31½′ West 177 feet;
South 14° 59½′ East 565 feet;
South 14° 33′ East 355.8 feet;
South 4° 38′ East 489.8 feet;
South 0° 16′ East 71.4 feet;
South 4° 1½′ East 90 feet;
South 16° 1′ West 210.3 feet;
South 0° 30′ West 328.5 feet;
South 5° 30½′ West 819 feet;
South 40° 15′ East 263 feet;
South 41° 19′ East 347.3 feet; to the junction.

Q. Now, Mr. Burns, going back to the River at the mouth
991 of Slick Rock Creek you cross it at an angle of South 48° 51′ West, and found the distance across the river to be 328.7 feet?

A. Yes, sir.

Q. I notice in these alleged field notes of Davenport the call crossing the river to be South 75° West 320 poles. Now assuming that the river covered 328.7 feet of that straight line, how much of it is north of the river?

A. Well, practically all of it in that distance.

Q. Well give it to us in figures?

A. 4951.3 feet.

Q. Now in your answers to questions on your direct examination, did you give all the discrepancies which you noted between these alleged field notes of Davenport and the map of 1821, and the report of the commissioners for both states?

A. Well, I tried to.

Q. Yes.

A. I think I did.

Q. Refer to that book to which your attention was directed during your examination in chief, and tell us where, according to the calls in that book, the state line crossed the Equoneetly Path to Cade's Cove?

A. Well, I would like to state here that neither the plat nor in my exhibit did I attempt to show any objects that they mentioned, that is in regard to paths except the Tennessee River and the point named creek.

Q. And the point named creek and the point called creek?

A. I mean the stream called creek, not the point.

Q. Now tell us where, according to those alleged field notes contained in that little book, the boundary line crossed the Equoneetly Path to Cade's Cove?

A. It says "Hickory 60th mile in a low gap at the gap from Equoneetly to Tellassee."

Q. That is not the path though from Equoneetly to Cade's Cove referred to in these field notes, is it?

992 A. I don't remember any Cade's Cove.

Q. What is the call in those field notes ending at this red oak?

A. South 50° West 120 poles.

Q. Now read on.

A. A red oak 54th mile, at the Equoneetly path to Cade's Cove; that is further back on the state line than I have ever been.

Q. Yes. Do you remember where the report of the commissioners calls for crossing the Equoneetly Path at?

A. No, sir.

Q. Suppose the report of the commissioners called for crossing the Equoneetly path at 53 miles: that would show a variance between those alleged field notes and the report of the commissioners, wouldn't it?

A. Yes, there would be a mile's difference.

Q. Now, I will ask you if you have present the copy of the map of 1821 which you exhibited with your original deposition?

A. I don't have that.

Q. Well, I show you another copy of that map and ask you if you don't recognize it as a blue print copy of that map (Handing map to witness) of 1821?

A. Well, it looks very much like it.

Q. Now at what mile mark does the path indicated on that map there from Equoneetly to Cade's Cove cross the state boundary line?

A. At the 53rd mile.

Q. To get that 53rd mile you counted back from the River, didn't you?

A. Yes, sir.

Q. Treating the mile mark on the south bank of the river——

A. As the 65th mile.

Q. As the 65th mile. Now there also appears on that map the path from Equoneetly to Tallassee?

A. Yes, sir.

Q. How many miles between the Equoneetly Path to Cade's Cove and the Equoneetly path to Tallassee?

A. As shown on the map?

Q. As shown on the map?

A. Seven miles.

993 Q. Seven miles; how many miles between those paths according to Davenport's alleged field notes. Examine the book and tell us.

A. Six miles.

Q. Now how many miles from that Equoneetly path to Tellassee as shown on this map of 1821 to the River?

A. You mean the number of miles from the trail where it is called path?

Q. Yes. How many miles of the state boundary line are there according to this map of 1821 between the point where the path from Equoneetly to Tellassee crosses the state boundary line?

A. Five miles to the south bank of the river.

Q. Did you find any 64th mile tree, Mr. Burns?

A. No, sir.

Q. Did you find any 60th mile tree?

A. No, sir.

Q. Wait a minute—any 60th mile tree, a hickory in the low gap where the turnpike crosses the mountain?

A. No, sir, according to Mr. Gannett's survey the 60th mile tree would be north of the road.

Q. How far north of the road?

A. I think something like half a mile.

Q. Isn't it a good deal more than a mile?

A. Well, it may be. I will look at his notes and see. (Examining book.) Well, it is very close to a mile, possibly a little bit more. It is pretty nearly a mile and a half.

Q. North of the gap where the turnpike crosses the mountain?

A. Yes, sir.

Q. Now what is the character of the ground where that 60th, at the end of the 69th mile according to Gannett's survey, as shown by his notes?

A. The 69th?

Q. Now the 60th mile which you say is about a mile and a half north of the gap where the turnpike road or path from Blount County, Tennessee, crosses into North Carolina?

994 A. Well, I haven't a detailed statement of his notes here, just his courses and distances. My recollection of it is just a plain open ridge.

Q. On a mountain, wasn't it?

A. Yes, sir, I never have been between the 60th mile and 59th mile, never been over that ground at all personally.

Q. Well, that turnpike road or path leading from Blount County in Tennessee across the mountain to Swain County, North Carolina, does run through a deep gap or depression in the mountain, don't it?

A. The road does. I don't know anything about the trail. I have heard them say that they thought that the trail went through the same place that the road does. I don't know whether it does or not.

Q. That was the tradition that was given you up in that country, wasn't it?

A. That is my recollection of it, but I may be mistaken about that. I don't know.

Q. Now have you been down there on the ground since these alleged field notes were discovered for the purpose of making a survey?

A. No, sir.

Q. You haven't attempted to run out those field notes and apply them to the ground itself?

A. No, sir, I only applied them to the survey I had made of the ground.

Q. Now, Mr. Burns, as I understand it, this sketch number four on your exhibit "BB" is how you platted these Davenport field notes from the 59th mile on west to the Georgia line?

A. Yes, sir, with the two corrections that I spoke of.

Q. Yes, and they are not made, and this sketch number four on this exhibit "BB" is not made from an actual survey by you at all?

A. No, sir, just made from the notes, *filed* notes.

Q. Now on this exhibit "BB" you put in something there just south of the river which you have marked creek?

A. Yes, sir.

Q. Now you don't mean to be understood as saying that you plotted in that stream on sketch number four from your
995 actual running of Slick Rock Creek, did you?

A. No, sir, I tried to throw away all the knowledge I had of the country from my mind and just make that from the notes as if I had never been in the country, just as a stranger would do never having seen the country at all.

Q. Now you had run Slick Rock Creek; why didn't you apply these notes to your actual running of Slick Rock Creek?

A. In what way do you mean? I compared them in four comparisons there; that was my idea in getting it up that way.

Q. Well you made a map which you filed as an exhibit to your original deposition showing your actual running of Slick Rock Creek, didn't you?

A. Yes, sir.

Q. Now why didn't you apply these notes to that creek to the actual runs according to your survey; why didn't you plot those calls down on that actual survey made by you?

A. I don't know as I catch your idea. I made the four distinct ones so that you could compare one with the other, that was the best way I know to get the comparison or show them.

Q. Now this sketch number four in so far as it relates to the stream marked a creek was just south of the Tennessee River, isn't based on any survey by anybody, is it?

A. It is based on the survey of the commissioners of 1821.

Q. And in other words, you just plotted the courses and distances contained in Davenport's alleged field notes south of the river, and then drew the creek into that line?

A. Yes, sir.

Q. That is what you did, didn't you?

A. Yes, sir.

Q. Without reference—and you did that without reference to how the creek actually runs on the ground, did you?

A. Yes, sir.

Q. Without reference to the creek, and without reference to your actual survey of the creek?

A. Yes, sir.

996 Q. Now take that little book of field notes said to be Davenport's and the first call south of the river according to that little book is South 80 poles up said creek, isn't it?

A. Yes, sir.

Q. How many feet in 80 poles?

A. 1,320.

Q. How many?

A. 1,320.

Q. Now, the course, of that call is a direct south line for 1,320 feet, isn't it?

A. Yes, sir.

Q. Now according to your survey of that creek as read to us here, the courses and distances, which will cover approximately 1,300 feet, are as follows: South—look at your book and see if I am not right about it—are you ready?

A. Yes, sir.

Q. "South 16° 28 East 285.6 feet; South 11° 7′ West 365 feet; South 10° 31′ East 581 feet."

A. Yes, sir, that takes you near to it.

Q. Let's see?

A. A little beyond.

Q. No it don't; 1,321 don't take you beyond.

A. Just about 100 feet difference.

Q. Those three calls aggregate 1,231, don't they?

A. I presume your calculation is right. I just took the difference in the stations.

Q. Let me see if I am right.

A. 1232.3 feet.

Q. Instead of that line there being a due south line you surveyed it to conform to the creek, and part of it is 16 degrees East of a south line, and part of it 11° West of a south line, and the last part of it ten degrees east of a South line; isn't it?

A. Yes, sir.

Q. And so the fact is that looking at those first two calls of
997 the line running from the river up the creek as you surveyed it, there is a difference of twenty-seven degrees there, isn't there? In other words, part of the line is sixteen degrees East of South and part of the line eleven degrees west of south?

A. Yes, that is true. If you take the whole distance for 1232.3 feet and plot that course from the mouth of the creek to that distance on the creek, and you get practically a south line which will correspond with the 80 poles in the field notes—given in the field notes; the little kinks in between, the small bends in the creek they didn't show, corresponding with the way they surveyed the ridges. I have showed all of those.

Q. I understand that is your explanation of it, but the fact remains that in that first line, in the first 1,231 feet, according to your survey there is a difference of twenty-seven degrees away from the call, from the first call in the first mile south of the river according to Davenport's field notes, is there not?

A. No, sir, that is not true. There is a difference of twenty-seven degrees between two courses of my survey, but not twenty-seven degrees different between the course of Davenport field notes; one is east of south, and one west of south.

Q. Well that is more accurate. At any rate your survey don't approach a due south line within ten degrees does it?

A. In that first 1,300 feet it doesn't; no, but you take the whole 1,300 feet and compare it that way it does practically.

Q. Well, look over your notes there and tell us about how—which one of those calls in the line running from the river at the mouth of Slick Rock Creek will terminate about a mile from the river?

A. The nearest one bearing North 73° 37½′ West 870 feet.

Q. How many poles in 870 feet?

A. Nearly fifty-three.

Q. How many degrees off of a due west line is that call North 73° 37½′ West.

A. It would be about 16° 22½′.

Q. Now, I believe you said, Mr. Burns, that when you got
998 up here near the 72nd mile, according to the Davenport field notes you found a call in said field notes South 30° West 80 poles which in making this plot, sketch number four of Exhibit "BB," you converted into South 30° East?

A. Yes, sir.

Q. Well, now read from that little book that note and the explanation that accompanies it.

A. From the 71st mile, which is a pine, the field notes read as follows: "South 35° 80 poles; South 80° West 100 poles; South 30° West 80 poles, white oak, 72nd mile, on the divide between the aforesaid creek and Citico Creek."

Q. Is that right on the divide?

A. Yes, sir.

Q. Then my copy is wrong. Let me look at that a minute.

Q. At the top of the page on the left.

Q. Look at that again, Mr. Burns.

A. South 30° West 80 poles. Well poles is not in there.

Q. There is no question about that. We understand that it is poles.

A. White oak, 72nd mile, on a ridge between the aforesaid creek, and Citico creek.

Q. Now there is nothing there about a divide is there?

A. It does say ridge instead of a divide.

Q. You had been reading that divide hadn't you?

A. No, I think that I had been reading it ridge. I construed ridge and divide to convey the same meaning.

Q. When you read it to the commissioner——

Q. I see that I was in error the way I read it in.

Q. In your examination in chief to-day didn't you refer to it, to that call, as being a tree on the divide?

A. I referred to it from memory, and possibly I did say divide. I don't know.

Q. And the fact is you had it in mind that it was on the divide, didn't you?

A. Yes, sir, I believe it is on the divide.

Q. What is that?

999 A. I believe it is on the divide.

Q. Well, I didn't ask you for your opinion, but you can give all of them that you like, but now since it is pointed out to you as being on the ridge, it doesn't say on the divide does it?

A. No, sir.

Q. So you arbitrarily changed that in making this sketch number four from South 30° West to South 30° East, didn't you?

A. Yes, sir.

Q. Now, South 30° West conformed to your survey that you had made a year or more ago, didn't it?

A. No, South 30° East did.

Q. So South 30° East conformed to your survey?

A. Practically so; yes.

Q. Then you changed it to have it conform to your survey, and ran along on the top of the ridge, on the divide, didn't you?

A. No, sir, that was not wholly my reason for doing it.

Q. Well that was part of your reason?

A. I compared it with the original plat that they made that was one reason, and the other reason was that it conformed to the actual survey that I made.

Q. Now, if you had run that last call in the 72nd mile South 30° West instead of South 30° East, why you would have run down on the side of the ridge which divides Slick Rock Creek from Citico, wouldn't you?

A. If I had run South 30° West?

Q. Yes, sir.

A. I would have run down on the Citico side.

Q. That is what I am asking you; you would have run down on the Citico side in the neighborhood of Pine Mountain, wouldn't you?

A. Well, I am not familiar with those mountains on Citico side any further than that I know that course would take me down on the waters of Citico somewhere.

Q. You would have run down a quarter of a mile on the side of the ridge, wouldn't you, at least?

1000 A. Yes.

Q. And then every other call from that point on if plotted into a map wouldn't have conformed either to your map which you have already made and filed, or to this sketch number four, which you filed here to-day, would it?

A. Yes, sir, that one course would throw the plot that much wrong, but the balance of the survey, and ridge was surveyed in 1821, would be the same—would be practically the same.

Q. Do you mean to say that if you ran that call due South 30° West it wouldn't have made any difference in the subsequent part of the line?

A. Not in regard to the platting of the line.

Q. It would make a good deal of difference about where it ran, wouldn't it?

A. Well, if I catch what you are trying to get at. You mean to run from where that South 30° East course starts and run the line down on the Citico side and then continue the courses and distances from that point?

Q. Yes. Then you are associating the map with what is in the field?

A. I am only associating the maps as they are platted together.

Q. Now, let me see if I can make myself clear. Suppose at the

end of this call South 80° West 160 chains, which is the second call in the 72nd mile, according to these field notes of Davenport, you had run a line South 30° West 80 poles, and then the first call in the 73rd mile South 30° East 200 poles; you wouldn't have been on the top of Fodder Stack Ridge at all, would you?

A. Well, no, if you start on the—no, comparing them in the field the way you are trying to get at it, that would be true, but if you were to undertake to run the other lines from the course given in the field notes where it says "South 30° West 80 poles that would be *down* a little on the Citico side. If you undertake to reverse the course and distance from the junction on the ground, then the whole state line would lie in the State of Tennessee that much.

Q. Yes, that much?

A. Yes.

Q. And it would not conform to a line on the top of the
1001 main ridge—mountain at any point from there on, would it?

A. Well, I don't understand; that is where we differ. I don't know what you are trying to get at by that. So far as the survey on the top is concerned in courses and distances it would correspond—it would just be a parallel line so to speak down on the Tennessee side.

Q. Down on the side of the mountain?

A. Yes, sir.

Q. And so running the line, giving due credit to this call South 30° West and actually running it on the ground you never would get around to that alleged 86th holly tree, would you?

A. Well, Mr. Cates, that is carrying the thing too far. The errors that those commissioners would necessarily make in running the line that distance, and then attempt to follow them with an accurate survey, I couldn't answer you. You might come pretty close to the holly, and you might be on one side, and you might be on the other side.

Q. Well, now, Mr. Burns, this sketch number one on this Exhibit "BB" which you say is an exact copy to some extent of the map of 1821, hasn't got any etching or tracing on it?

A. No, it is just a tracing——

Q. Wait a minute. To show that the line is on top of the mountain?

A. No, sir, it is just merely to show the line as they run and plotted it; that was the intention of it.

Q. Now, according to this map of 1821, if the mile circle immediately south of the Tennessee River is the 65th mile circle, the 69th mile circle is not any way near a stream is it?

A. No, sir, not according to the map.

Q. Now the last call in the 69th mile contained in these alleged field notes of Davenport, is South 35° West 120 poles to a maple on the east bank of said creek 69th mile. Now I ask you to please tell me how far, according to the scale of this map of 1821, the 69th mile circle is west of that stream on which that is marked a creek?

A. That looks to be about a mile and three quarters.

Q. Oh, get dividers.

A. But I haven't any or no scale either.

1002 Q. Well, haven't you any rule?

A. No, sir, not with me.

Q. It is an inch there (indicating) isn't it, at least, from that stream marked creek?

A. No, it doesn't look like an inch to me. From the mile circle shown on the map as near as I can determine without a scale it looks to be about a mile and three quarters.

Q. Do you want that answer to stand now.

A. Well, that is as near as I can tell without a scale. Yes, sir. That is as close as I can give it to you unless I scale it off with a scale and I haven't got it.

Q. Let me see it. Well, let me get a piece of paper. I can beat that.

A. All right; maybe you can. The nearest point of the creek is what you want isn't it?

Q. Yes.

A. Be about steps. That is one mile—that is about three-quarters of another mile. If you can beat that I will take off my hat to you.

Q. I can't. At any rate it is not on the east bank of that stream marked creek?

A. As shown on their map it is not; no, sir.

Q. Well, now the end of the 70th mile, as shown in these field notes, is at the end of a call as follows: South 30° West 320 poles to a birch on the west bank of said creek, 70th mile." Now that 70th mile circle on this map of 1821 is not on the west bank of that stream marked a creek there is it?

A. No, sir, not on the west bank. It is on the west side of it.

Q. Well, how far from the stream marked a creek on the west side, is it?

A. It is a little bit more than two miles.

Q. Do you find any tree with 70th mile marked on it?

A. I didn't find any tree that I thought was a mile tree.

Q. According to these field notes the end of the 71st mile is a pine; did you find any tree so marked in your running from the river up to the top of the Fodder Stack?

A. No, sir, I didn't find no mile trees.

1003 Q. The end of the 72nd mile is a white oak. Now you didn't go to the end of the 72nd mile as it is called for in these field notes, did *not*, that is following the last call South 30° West 80 poles a white oak, you did not go to the end of that call, did you?

A. I didn't run that course and distance. I stayed on the top of the mountain. That is according to the field notes, as I understand it.

Q. Did you run South 30° East?

A. About so; yes.

Q. Yes what?

A. About so. I don't pretend to say that my course and my distance was exactly South 30° East, but very close to it; some variation, I suppose.

Q. You didn't go down there a quarter of a mile on the side of Fodder Stack Ridge to find out whether there was a white oak with the mark 72nd marked on it?

A. No, sir, because I found the marks on top of the ridge.

Q. Did you find any marks on the end of the 72nd mile as you ran it?

A. Yes, I did, but I wasn't sure that they were state line marks. It was one of those white oaks and the bark was decayed, scaled off, and I couldn't tell whether it actually had state line marks or not. I didn't make any notes of it. I just remember the tree as standing there.

Q. Do you state distinctly that it had marks on it?

A. That is my recollection; that it had marks on it.

Q. Why didn't you block it?

A. Well, I blocked a number of trees. I didn't want to block them all.

Q. That would have been a mighty important place to have blocked?

A. I didn't know of the field notes calling for a white oak, 72nd mile then. I didn't know whether it was a white oak, or pine or what.

Q. But if it was marked it was important to know whether it contained state line marks, wasn't it?

A. Do you mean to say that I ought to have—blocked every tree that bore marks?

Q. I don't mean to ask you that. I asked you why you
1004 didn't block that tree?

A. Because I didn't want to obliterate all the marks.

Q. That is the reason for not blocking that tree?

A. It was not necessary to block that particular tree. I had found a number of marks that I saw were state line marks and I had blocked two trees between that point and the junction which I thought was sufficient but if it should be necessary I can go out there and produce a good many more blocks.

Q. Now, Mr. Burns, refer to your notes, and give us the calls as run by you and immediately north of that holly tree, which you say is marked as the 8th mile tree.

A. You mean further towards Jenk's Knob?

Q. No. North of that holly?

A. You want me to go from the holly back?

Q. Yes, back towards the state ridge.

A. North 48° 47′ East 45 feet;
North 35° 52½′ East 202.1 feet;
North 30° 17½′ East 120.9 feet;
North 43° 47½′ East 81.9 feet;
North 36° 48½′ East 124.2 feet;
North 50° 44½′ East 138 feet;
North 72° 12′ East 232.4 feet;
North 51° 32½′ East 378.4 feet;
North 69° 40′ East 1,153.7 feet;
North 79° 41½′ East 411.1 feet;
North 57° 56′ East 615.6 feet;

North 79° 4½′ East 501 feet;
South 81° 30½′ East 303 feet;
North 56° 5′ East 474.4 feet;
South 63° 43½′ East 133.6 feet;
North 56° 16′ East 241.6 feet;
North 88° 22′ East 132 feet;
North 65° 56′ East 384.4 feet;
North 77° 15½′ East 243.5 feet;
North 59° 58′ East 361.9 feet.

1005 Q. You can stop when you get enough to make a mile.

Q. I didn't know you mean just a mile. I have gone considerably over that, I suppose.

Q. Try and see.

A. That is practically a mile, a little bit over 5,329 feet. Well that will make a little bit more.

Q. That lacks a good deal of being a straight line, don't it?

A. Yes, sir, it is not a straight line.

Q. Now, Mr. Burns, do you mean to be understood as saying that you went around the state line as Tennessee claims it to be on the dividing waters between Tellico River and the waters running east into North Carolina, and that there is not a holly tree where the 86th mile would terminate?

A. I mean to say that there is no holly tree marked as this other 86th mile was, and I don't remember of any holly tree being there at all. I don't think there is any.

Q. Were you looking for a holly tree?

A. Not particularly, no, but holly trees are trees that a person most always sees in going through the mountains. I never saw any on that divide at all. There may be some.

Q. Were you ever up at the head waters of the middle fork of Tellico?

A. I have only been along the state line.

Q. Yes.

A. Where it is undisputed, and where it is claimed by North Carolina and where it is claimed by Tennessee. I have never been down on the waters of Tellico any further than where the state line crosses as claimed by North Carolina.

Q. You never did go up to the head waters of Tellico?

A. Well, I have been around the very head, up towards, up against the state line.

Q. Yes, the state line as Tennessee claims it to be?

A. Well, in that section, and also where it is undisputed. The head waters of Tellico cover a vast amount of territory.

1006 Q. And it heads, the point of the line where North Carolina claims—east of the boundary line as North Carolina claims it, doesn't it?

A. Well, some of it in the disputed section is east.

Q. That is what I am asking about?

A. But that is only the middle prong of it.

Q. I am talking about the middle prong or fork?

A. Yes, but your question refers to the whole Tellico River as I understand it.

Q. The head—middle fork of Tellico River is east of the line that North Carolina claims to be the boundary line?

A. Yes, sir, the extreme head of it is on the east, that is the extreme water shed.

Q. Well, it is east of the boundary line as you have shown it on this exhibit number two of exhibit "BB" isn't it?

A. The extreme water shed is when you spoke about the head waters of a stream why it means several miles in distance.

Q. The head waters of the middle fork of the Tellico River are east of the line claimed by North Carolina as those head waters are portrayed on this sketch No. 2 on exhibit "BB," are they not?

A. Yes, sir.

Q. Is this the exhibit to your original deposition that I asked you to bring in?

A. Yes, sir.

Q. Now what is this exhibit called?

A. Complainant's exhibit D.

Q. Now this exhibit D shows Slick Rock Creek as you ran it from its mouth five miles southwest?

A. Yes, sir.

Q. By actual survey?

A. Yes, sir.

Q. According to the courses and distances which you have set out in a previous answer to this cross examination?

A. Well, the courses and distances that I gave you don't lay exactly inside of the bed of the creek all the way. The stream as represented on the map diverts very slightly in a few places from the actual bed of the stream.

1007 Q. Now then, Mr. Burns, will you please lay down on this map Exhibit D the calls contained — the alleged Davenport field book from the 65th mile to the 75th mile?

A. I can't do it here.

The State of North Carolina has no objection to making a map showing the Davenport Field Notes as adapted to the stream located by actual survey, but would object to putting the Davenport Field Notes on this map of any evidence which purports to have been made according to an actual survey in any way which would confuse matters, as the matter has been testified to heretofore at considerable length as to the Davenport Field Notes.

Gen. CATES: Let me see if I understand the position of counsel for North Carolina. You object to the witness laying down on this map in connection with Slick Rock Creek the field notes contained in the Davenport book from Tennessee River around to the 75th mile.

Mr. SONDLEY: I object to doing that on that particular map, but you can, if you like, get the witness to make another plat, and plat Slick Rock Creek as it appears on Exhibit D, and then put the Davenport Field Notes on that other map, and state that it is according to an actual survey; that the Davenport Field Notes was added to it. The objection of North Carolina being that this map

is already in evidence and testified to and to make additions to it now would produce confusion.

Gen. CATES: The Commissioner has ruled that he has no power in the premises.

Q. Mr. Burns, can a surveyor taking your calls set out in your answer to a previous question from the mouth of Slick Rock Creek up to the point where you leave it, and correctly plot the location of that creek as it is on the ground?

A. Well, he can take my field notes and do it. Yes, sir, my field notes show offsets to the creek where my line didn't lay exactly in it.

Q. You have given us your field notes?

A. I gave you the courses and distances as you asked me for.

Q. How much does that lack of being field notes?

1008 A. Just as much as you see the departure of the creek on the line as laid down on the complainant's exhibit D. I think, however, that all of those distances showing the exact location of the creek — given in the copy that Mr. Gannett filed at Washington. I just glanced at it. He has my copy. I just glanced through it. I don't recollect what it did contain. It was supposed to contain all the notes.

Q. In that exhibit that Gannett made to his deposition?

A. That is my recollection, and from those notes you can plot the creek as laid down and shown on that map.

Q. Make me two tracings of this Exhibit "BB," accurate in every respect and note upon some place on each one of the tracings that it is a copy of this Exhibit "BB," filed with your deposition on the 1st day of May, 1911; for which, representing Tennessee, I will pay you whatever your reasonable charges are.

A. All right. It will take some little time to do it, but I will do it for you if you want it.

Q. How long?

A. It will take me about two days; about a day on each one. It is very fine lines in there.

Q. You can furnish them within a week anyway?

A. I think so if my employers will let me consume the time. I can make you a blue print of it in about five minutes.

Q. I do not want a blue print. Mail the tracings to me at Knoxville, with your bill.

Redirect examination.

By Mr. F. A. SONDLEY:

Q. I believe you were asked on your cross examination to take the Davenport Field notes and see if they agreed with the commissioners' report of 1821, and possibly with the map of 1821, as to the distance from the point where the commissioners began—to where they crossed the path from Equonectly to Cade's Cove?

A. Yes, sir.

Q. And I believe you said that as you understood it the Commis-

sioners' report and the map of 1821 made that cross at 53 miles; is that right?

1009 A. Yes, sir.

Q. But that you understood that the Davenport Field Notes make it 54 miles?

A. Yes, sir.

Q. You did that, I presume, because the entry was read to you from the Davenport Field Notes as follows: "Red oak, 54th mile, at Equonectly Path to Cade's Cove."

A. That is the reason for that discrepancy.

Q. Let me call your attention to the Davenport Field Notes that shows that first mile is put at the end of the first mile?

A. Yes, sir.

Q. And second mile at the end of the second mile, and the 53rd mile would of course, be at the end of the 53rd mile or at the beginning of the 54th mile.

A. At the beginning of the 54th mile.

Q. Then there is no discrepancy in that record is there?

A. From that standpoint there is not.

Q. Please examine the book of the field notes of Davenport and see if that is the proper standpoint?

A. It looks to me, Mr. Sondley, like it would be at 54 miles from the beginning.

Q. Fifty-four?

A. The end of the first mile would be one mile.

Q. And then the end of the 53rd mile would be——

A. Would be fifty-three miles.

Q. But that don't—say "end of the 54th mile."

A. It says "Red oak 54 miles." Now let me see.

Q. If the end of the first mile is one mile, then wouldn't the end of the 53rd mile be at the end of the 53rd mile?

A. The end of the 53rd mile would be the end of the 53rd mile that is true.

Q. So that you think then according to the book of Davenport's field notes it would really cross at 54 miles from the beginning?

1010 A. That is the way that I would interpret it, Mr. Sondley. It looks that way to me.

Q. Now you were asked also on the cross examination if there was not a discrepancy between the map of 1821 and the Davenport field notes in regard to the distance between this Equonectly Path to Cade's Cove and the 60th mile, at a hickory, low gap at the path from Equonectly to Tallassee; do you know where the path from Equonectly to Tallassee crosses?

A. No, sir.

Q. Then do you know that there is a discrepancy in that record?

A. No, I don't. All I know about that path is that I have been told by some persons that they thought that it went through the same gap that the road does, but they were not positive, but I don't know anything personally about it.

Q. The plat of 1821 doesn't show say that this path to Tallassee is the Equoneetly path does it?

A. I don't remember about it.

Q. Can you use your copy here. The other don't seem to be here.

A. It shows on their plat path to Tallassee crossing about the 60th mile, counting mile circle—on the south bank of the river as the 65th.

Q. But it doesn't cross right at the 60th mile, does it?

A. Well, it is a little bit south of it.

Q. And so you couldn't say there then, could you, that that was the Tallassee.

A. That was the Equoneetly path to Tallassee.

Q. So I couldn't be sure that that mile tree was right in the low gap from the plat which you have made. You were asked why you hadn't platted it into the copy of the map there that you made of a comparison of 1821—plat the Tellico River—did you plat into that Slick Rock Creek there?

A. No, sir; I didn't attempt to show any stream except the Tennessee River, and that thing marked creek; or no etching, none of the paths.

Q. But when you platted from an actual survey in crossing any stream did you put down the stream on the plat that you made on this Exhibit "BB"?

1011 A. Yes, sir.

Q. You said that the call for a tree on a ridge between the waters of two creeks meant in your opinion the ridge that divided the waters of those creeks?

A. That is what it would have to be according to my interpretation of it; a ridge that divided two water sheds would be certainly—it would have to be—on the water shed.

Q. Would it be any guidance if it didn't have that interpretation?

A. No, sir.

Q. Now coming to this call for a line near the 72nd mile that runs South 30° West, you said that that would run down on the waters of Citico somewhat from the top of the ridge?

A. Yes, sir.

Q. So that you changed it to South 30° East and went with the top of the ridge?

A. Yes, sir.

Q. And found a marked line?

A. Yes, sir.

Q. Of the old state line marks?

A. Yes, sir.

Q. As an expert surveyor, Mr. Burns, in making any survey you should find a call of that sort, if running east with the degrees would not tally with the marked line, if running west it would, or the reverse, how would you interpret that?

A. I would interpret that it was an error in writing the call. You very often find that in common land surveying.

Q. Now you were asked, according to the Davenport field notes if you had run west there, that that would have thrown you off for the

entire remainder of the survey. I ask your attention to a call at the end of the 75th mile, "beech, 75th mile, main mountain." If you had run to the main mountain from there on, the thing would have been the same, wouldn't it, as you did run?

A. Yes, sir.

1012 Q. In other words, when you got back to the main mountain? What was your answer?

A. Yes, sir.

Q. Then if you hadn't make a correction of that error in the South 30° West you would have to make it soon afterwards before you got to the end of the 75th mile in order to get to the main mountain, wouldn't you?

A. Yes, sir.

Q. Now you were asked in your cross examination if the 69th and 70th miles would not terminate at points some distance from the creek as it was laid down on the map of 1821, and you said it would, but that the Davenport field notes made it on the creek?

A. Yes, sir.

Q. Or practically so. Now what is your explanation of how that creek is wrong there, if it is wrong on the map of 1821?

A. Why the creek was just merely sketched in. It must have been done by a careless draughtsman, and he paid very little attention to the field notes about the 69th mile and the 70th mile; just sketched it in wrong.

Q. Does the fact that you find the marked line not leaving the creek till you have reached the fifth mile tend to support or controvert that theory?

A. Support it.

Q. If you, as a surveyor, were given a map to run a line, and you found that although the map that contained the creek simply making it depart out a mile and a half—in order to strike the marked line from a certain point, yet, in order to strike the marked line beyond it was necessary to follow the creek for five miles, how would you interpret that?

A. Well, I would interpret that it was an error in sketching in the topography, and that the line was run correctly.

—. Now in meandering mountain ridges and streams is it possible to make two surveys exactly tally when one notes every bend, while the other goes a distance of sometimes 80 poles at a time?

A. No, sir, they won't exactly tally.

Q. Well, how would then as a surveyor say that that map should be interpreted—that that call should be interpreted when you

1013 found those distances of 80 poles given, but actually found to make every little minute turn there was some difference in course and distance?

A. Well, I would interpret it to mean that the line that they adopted and recognized as the state line was the line that they marked.

Q. Would you see any conflict, therefore, where the top of the mountain or a stream was meandered by a distance of some forty and sometimes eighty poles between the and a more minute mean-

dering, that you would consider as necessarily proving that either survey was essentially wrong?

A. No, sir, it would not necessarily prove that.

Q. Then when you did go up the creek and the aggregate of your various courses and distances amounted to about what the call for was, but not on the same course quite, would you treat — as a substantial compliance or otherwise?

A. It would be a substantial compliance. About the only difference you would find between the Davenport field notes and the survey of the country up Slick Rock Creek, which they term creek, assuming that to be Slick Rock Creek, about the only difference between the two would be that the plot of the Davenport field notes would have a tendency to stretch out the bends in the stream. I believe that they actually measured around every wind of the stream. It would have a tendency to make the plot longer while the actual measurement on the ground correspond almost exactly.

Q. Suppose they had taken time to note every little wind in the mountain ridge or in meandering the stream, would that have consumed a great deal more time than to run it the way that you suppose that they did, and the notes seem to show that they did.

A. Yes, sir, very much longer—I should say three times as long.

Q. You spoke of the white oak called for on the ridge between the creek they had been talking of and Citico creek at the 72nd mile; you said you found a white oak where that should have been or about that place?

A. Yes, sir, there is a white oak stands there about that place. I don't know that it is exactly.

Q. But that you couldn't tell whether it had state line marks or not because of the character of the bark?

A. Yes, sir.

Q. Is there any difference in trees as to holding external
1014 appearances of marks after the lapse of a great while?

A. Yes, sir, there is a vast difference. Some trees where they are sheltered they hold marks for a much longer period than others. Where they are exposed to the weather the bark seems to shed off, and the marks go with it; you can't detect them. That is a white oak that I saw there—a white oak with the bark in such a condition that it is difficult to see old marks on it, and possibly not see old marks on it at all, but I remember that we looked at that tree for a considerable period trying to make out whether or not it was a mile tree, and we finally came to the conclusion that we couldn't see sufficient marks on it to warrant such a conclusion, and we never even made a note of the tree in the notes we made, but I remember the tree very distinctly as standing about that place.

Q. In going from that on did you find trees bearing state line marks for the next course or the next distance you went?

A. In running towards the southwest we found quite a number of trees from that point to the junction all along the mountain. I don't know whether they would be in the next course—I presume that they would be in the next course after that, I think. We found some marks on them. That is my recollection.

Q. Bearing state line marks?

A. Yes, sir.

Q. How nearly would that tree tally with the marked line which you found running from Slick Rock up towards Big Fodder Stack, and making the turn there?

A. Well, that tree is right on the water shed between Slick Rock Creek and Citico Creek, and while I never noted the difference still while I never noted the tree in my book, I know the distance calle we measured on the ground and came about right for the 72nd mile, and that is the reason that makes me think that this might have been a mile tree from the indications of marks that we saw on it. Still we couldn't be positive about it, and never made a note of it.

1015 Recross-examination.

By Gen. CATES:

Q. Mr. Burns, you have been asked to give your opinion about how the commissioners came to put the 67th and 68th and 69th mile circles assuming that the one immediately south of the Tennessee River is the 65th, so far away from this stream on the map of 1821, marked creek. Let me ask you to examine this copy of the map of 1821 also, and ask you to state if the 67th, 68th and 69th mile circles as shown on this map of 1821 don't appear to be on the crest on a mountain, according to the shading or etching of this map?

A. I never did understand thoroughly the etching on that map, but the way it appears to me that they tried to represent on that map at that point after leaving this stream they followed a ridge.

Q. Well, you have already testified several times during your original examination and your cross examination that those mile circles 67th and 68th and 69th all appear to be upon the top of a mountain according to the shading contained on this map of 1821. Do you want to change your testimony in that respect?

A. No, sir, I don't change my original testimony at all. In my original testimony I said what I say about it now, that the indications of the map, according to the way I interpret it, is that immediately after they left this thing called creek they followed a ridge.

Q. And according to this map of 1821 they left this stream marked creek in less than two miles from the Tennessee River?

A. Yes, sir, about a mile and a half.

Q. And don't you suppose that Davenport and Armfield who are said to have been surveyors on that occasion and who signed this map of 1821 knew the difference between the mountain top and the stream?

A. Why, certainly they did. I would suppose they would.

Q. If Mr. Davenport could run a line as shown by his field notes he knows the difference between a stream and the mountain top, don't he?

A. Yes, sir.

Q. And isn't it fair to assume then that since he didn't say—

isn't it fa-r to assume since he signed a map showing that the
1016 line was on top of the mountain that they intended to disregard the field notes which he may have made?

A. No, sir, I don't think so because the field notes clearly specify 69th and 70th mile on either bank of the creek.

Q. Where are the 69th and 70th mile circles on this map?

A. Well, they don't appear on the thing that they mark creek on there, but that is an error in sketching in the topography.

Q. According to this map they appear to be on top of the mountain, don't they, the 69th and 70th circles?

A. They appear to be on the ridge, but it might be on top of the mountain; it might be a ridge leading up to the top of the mountain.

Q. Well if you had run that line up Slick Rock Creek as Davenport's field notes would seem to have indicated that he might have done, you would never have made a map like this map of 1821 to conform to those field notes would you?

A. Well, at this day and time I would not. I would show the stream as far as I run with the stream.

Q. Well any surveyor would show the stream as he run with it?

A. Well they ought to have done it, but in this case he hasn't done it. The field notes says one thing and the map another.

Q. Since he ought to have done it, and didn't do it, isn't it fair to assume that there was some reason why he didn't do it?

A. I don't think so. I think it is just carelessness in sketching in the topography.

Q. Well, if you had run up that creek and then made a map like this showing that you don't follow the creek there would have been some reason why you didn't follow the creek on that map, would there not?

A. Well, I guess there would be a reason for it, but this reason I suppose was carelessness; that would be the only reason I would have for not showing would be carelessness in my draughting. And the fact that the courses and distances shown on the map of 1821 in the section that we are just speaking about, corresponded to the map which they made, showing that they are one and the same, and that there was no change made from those courses and distances.

1017 Q. They did not follow the creek on that map?

A. Yes, they followed the creek on that map. They did not sketch the creek the way they followed it is the trouble.

Q. Does the map of 1821 show the 78th mile circle to be on the east bank of a creek?

A. No, sir, it doesn't show it on the east bank.

Q. Then to that extent it departs from the call of the Davenport field notes, don't it?

A. That is the way it looks to look at the map; yes.

Re-redirect examination.

By Mr. SONDLEY:

Q. Do surveyors make mistakes, Mr. Burns?

A. Yes, sir, very often.

Q. Very frequently?
A. Very often.
Q. Is there any creek in that country that runs into the Tennessee River from the south that runs like this they have marked with creek down there?
A. No, sir.
Q. Then they did make a mistake?
A. Yes, sir.
Q. What would you do to rectify that?
A. I would run it up five miles, then they would have a pretty fair representation of Slick Rock Creek.
Q. If Mr. William Davenport and Mr. Armstrong would know the difference between a creek and the mountain, wouldn't you think that Mr. William Davenport and Mr. Armstrong would know when they marked a line of trees whether that *the was* true line or not?
A. Yes, sir.

Re-recross-examination.

By Gen. CATES:

Q. Do you mean to say that Mr. Armstrong marked any of those trees?

A. I didn't see him mark them.

1018 Q. Is there anything in that book to indicate that he was along Slick Rock Creek at all; Robert Armstrong I am talking to you about?
A. Robert Armstrong?
Q. Yes, sir?
A. No.
Q. Mr. Sondley asked you——
A. Those field notes say William Davenport——
Q. Then there is nothing in that book of field notes to show that Armstrong had anything to do with anything contained in that book, is there?
A. Well, I don't remember of his name being mentioned in it. It may be. I don't remember it.
Q. Now if there is anything in that book that indicates Robert Armstrong's name in connection with any part of this line along Slick Rock Creek, please point it out to us now.
A. Well, as I said, I don't remember about his name being mentioned in the field notes; if it is I don't know. I would have to look through them carefully again, but I don't remember of ever seeing it.
Q. Well, the reason why I asked you about Robert Armstrong was that his name was put into a question to you by Mr. Sondley, and your answer seemed to assume that he was along with Davenport, along that survey on Slick Rock Creek; do I understand you to mean that you don't intend to be so understood?
A. Of course, that Mr. Armstrong signed the plat that was made, that these field notes corresponded with, judging from that standpoint, you would naturally suppose that he was along, but there is

nothing in the field notes that I remember of that states he was along.

Q. So you leave it that Armstrong was along there on Slick Rock Creek?

A. I leave it that I believe it. I don't say that he was. If there is anything in the Davenport field notes that says he was along, I don't remember it.

The defendant objects to the several answers of the witness just hereinbefore given in which he undertakes to state what his belief is as to whether Mr. Armstrong was on Slick Rock Creek in 1821 at any time.

1019 Re-re-redirect examination.

By Mr. SONDLEY:

Q. This plat of 1821 says Robert Armstrong helped make that survey of 1821, doesn't it?

A. Yes, sir, he signed the plat.

Q. And the report of the Commissioners shows that, don't it?

A. Yes, sir.

Q. And I ask you to examine this book of field notes of William Davenport, and see there where he says "And go to a stone or to a maple, marked W. D. and R. A. R. A. would stand for Robert Armstrong by a little force of the imagination, wouldn't it?

A. You would naturally suppose that was what it was for.

Q. Don't you think that William Davenport would know whether or not he marked a line, and how a line ought to be marked, when he was surveying the state boundary?

A. Yes, sir, no doubt about that in my mind.

Re-re-recross-examination.

By Gen. CATES:

Q. I call your attention to this at the bottom of the page here that was read to you; what do you say that is?

A. Well the last two letters there look like "R. A."

Q. What just precedes that?

A. "I. X. D. R. A."

Re-re-re-redirect examination.

By Mr. SONDLEY:

Q. Let me ask you to examine it closely. I ask you if it isn't "W. D." instead of "I. X. D." for William Davenport, followed by "R. A."?

Defendant objects to the continued and leading suggestions to the witness by counsel for North Carolina. The witness has already stated what he thought that lettering was.

A. Well, it could be construed that part "IX." and part of the "D" would form a "W."

1020 Q. Well looking at that place, and being followed by "R. A." and knowing that the surveyors on that survey were William Davenport and Robert Armstrong," how would you read that?

A. One would naturally think that was the names of the surveyors on both sides—the initials of the names of the surveyors on both sides.

Q. What is the custom of surveyors in marking points that way to indicate?

A. They very often mark them with their initials.

Re-re-re-recross-examination.

By Gen. CATES:

Q. It didn't occur to you, did it Mr. Burns, to read it "W. D. R. A." until Mr. Sondley suggested it to you, did it?

A. Well, no, I couldn't see the "W." very distinctly until Mr. Sondley called my attention to it. And the "W."—you can very easily make a "W." out of it by using one part of the "D.," but I believe on a second look at it that is what is meant.

Q. Certainly it has been suggested to you that it might be "W. D. R. A." but your impression, without the aid of Mr. Sondley or any suggestion from him, was that it was "I. X. D. R. A.," wasn't it?

A. Yes, but from the fact that I didn't read what you read before the thing—if I had made a study of it, I suppose that I could have seen the interpretation better, but just looking at the letters as they appear in there, Mr. Sondley's suggestion made me see the "W."

Re-re-re-re-redirect examination.

By Mr. SONDLEY:

Q. "I. X. D. R. A." would have carried no significance to your mind?

A. No, sir.

Q. "W. D. R. A." would have been very significant, wouldn't it?

A. Yes, sir.

D. B. BURNS.

Hearing adjourned until ten o'clock A. M. May 2, 1911.

1021 Pursuant to adjournment hearing resumed at ten o'clock A. M. May 2, 1911.

Appearances:

For the State of North Carolina: Mr. G. L. Jones, Assistant Attorney General of North Carolina, Messrs. Theodore F. Davidson, F. A. Sondley, and W. B. Councill, counsel.

For the State of Tennessee: Hon. Charles T. Cates, Jr., Attorney General of the State of Tennessee, and T. E. H. McCroskie, Jr., Esq., counsel.

1022 S. S. GANNETT, recalled, on behalf of the State of North Carolina, testified as follows:

Examined by Mr. SONDLEY:

Q. When you were last examined in this case had you ever seen the original William Davenport field book of the 1821 survey?

A. No, sir I had not.

Q. When you were originally examined in this case had you ever heard if its existence?

A. No, I had not.

Q. I show you a book so marked and certified on April 18, 1911 by J. H. Beall, Notary Public and Examiner, as having been testified to by W. D. Jones before him, and ask you to examine it and see if you have ever seen this book, and if so when you first saw it and where. (Handing book to witness).

A. Why I never saw it until last Saturday, April 29th. Mr. Jones had it.

Q. In the possession of Mr. ——

A. Jones.

Q. The Assistant Attorney General of North Carolina?

A. So I understand; yes, sir.

Q. Have you examined it with any care?

A. Well, yes, I have looked through it quite carefully.

Q. Have you examined with especial care that portion of it that bears on the part of the boundary line between North Carolina and Tennessee, or the parts of that line now in controversy?

A. Well, yes, especially in the Slick Rock region, and at the head of Tellico region.

Q. I wish you would please, sir, take the point as near as you can locate it on the mountain north of the Tennessee River from which the line as given in those field notes of William Davenport crosses the river, and tell me, if you know, about where that would be?

A. It states in these notes "crossing the Tennessee River to a large white pine south side of the river at the mouth of a large creek, 65th mile." I think I can. I have been on the ground at that point and recognize it as being at the mouth of Slick Rock Creek.

1023 Q. Now let us go back from the Slick Rock Creek to the beginning of the call which reaches what is recognized as Slick Rock Creek?

A. A large white oak at the 64th mile.

Q. Then what is the call, please sir, from there?

A. Thence South 75° West 320 poles crossing Tennessee River to a large white pine, (just as I represented) on the south side of the river to the mouth of a large creek 65th mile, and up said creek.

Q. Now that line that crosses the river is on a course of South 75° West?

A. Yes.

Q. Suppose instead of going from the top of the mountain to the mouth of Slick Rock Creek you should go down the mountain to the point at which Tennessee claims the line should cross the river, would that be on a course of South 75° West?

A. No.

Q. About what course would it be as nearly as you can approximate it from that 64th mile to the point where *the* Tennessee claims the line crosses the river?

A. I should judge it would be nearer South 30° West perhaps.

Q. Suppose you were to go from that 64th mile to the mouth of Cheoah River, what would be the course that you would have to take there?

A. Well, that would be, I should say, a southeasterly course.

Q. Then starting at the 65th mile it says: "Up said Creek" and gives the course and distances to the 70th mile, which you see on that book (handing book to witness). Have you examined those courses and distances between the 65th and the 70th mile as given in those field notes of William Davenport?

A. Yes.

Q. How do they tally with the actual courses for five miles up Slick Rock Creek from its mouth?

A. Well, they tally as close as one could expect from compass courses, and with distances measured with a chain.

Q. Suppose instead of going to the mouth of Slick Rock Creek you were to go to the mouth of Cheoah River, and undertake to go up the Cheoah River, would those courses and distances fit the Cheoah River?

1024 A. Why, no not at all.

Q. Why would any of them run along the Cheoah River at the distance which is given there as from the Tennessee River?

A. Well, no these courses are all southwest and I should say the course immediately up from the mouth of the Cheoah River would be a southeasterly one.

Q. Suppose you should, however, go from the 64th mile to the point where, according to the Tennessee contention, the line should cross the Tennessee River, would you cross at the mouth of any creek that empties into the Tennessee River on the south?

A. Repeat that question.

Q. Suppose you were to go from the 64th mile tree to the point where, according to the Tennessee contention, the state line should cross the Tennessee River, would you cross that river where any creek emptied into the river on the southern side?

A. No, there is a bluff or ridge there.

Q. What is the nearest stream above the mouth of Slick Rock Creek that empties into the Tennessee River?

A. Well, there is the Yellow Hammer Creek that empties into the Cheoah River, and I believe maybe one or two small creeks.

Q. Are they of any size or capacity?

A. No, not of any size.

Q. Then the Cheoah River would be the first stream of any size that you would come to above the mouth of Slick Rock Creek?

A. Yes.

Q. Do you know how that would be going down from the mouth of Slick Rock Creek, what first stream you would come to emptying into the Tennessee River of any size noticeable?

A. Well, I haven't been down the river; that is not along the river.

Q. You couldn't tell that?

A. Only from general knowledge.

Q. Have you a general knowledge that would tell you about that?

A. There is no large creek for a number of miles down the river coming in from the south side.

1025 Q. Suppose then that you would take your position on the south side of the Tennessee River where the Tennessee contention is that the state line should cross, and then take those courses given from the 65th mile in the William Davenport field notes up to the 70th mile, would you be at any place along there on a stream at all, starting now from the south bank of the Tennessee River where Tennessee says the state line should cross, and then following those courses and distances given in the Davenport filed notes from the 65th mile to the 70th mile, would you pass along any stream?

A. Well, no, you would pass across country, I should say, not on any particular ridge—certainly not on any stream.

Q. Would anyone of them follow a stream on those calls from the 65th mile?

A. One might accidentally cross some small stream perhaps.

Q. Would anyone be as much as a creek?

A. No, not of a creek of any size.

Q. Now, I note from the testimony heretofore given that the marked line from the 64th mile down to near the bank of the Tennessee River isn't on this course given in these field notes of South 75° West, nor is the marked line from the point where this marked line reaches the river down to a point opposite the mouth of Slick Rock Creek on this course of 75° West. How do you account for the fact that the field notes call "South 75° West" when the marked line goes about or nearly to the river on a different course, and then turns down the river on a different course?

A. Why, I should say the surveyor evidently sighted from the bluff north of the river in order to take the longest sight he could, and of course he couldn't follow that sight down the river, that is down the bed of the river, but traversed along the shore of the river, and then crossed the river at the first available point.

Q. So your idea is that these field notes would be carefully taken from one point to another point and that was not reached by passing along that direct line but somewhat around?

A. Yes.

1026 Q. Why would they adopt that course of going around instead of going straight along the course shown by the compass?

A. Principally to make speed I should say. They would take the longest sight they could get and then go to the point sighted by the compass if they could get to it.

Q. Would there be any difficulty about walking generally and marking a line on that course of South 75° West along there?

A. Well, yes. I should say that they could not possibly have

gone down the central channel of the river. They would naturally have to follow along the bank of the river.

Q. Would there have been any difficulty of labor in even chaining to the river and marking it from the 64th mile on a course of 75° West at that place?

A. Well, they could chain along the bank. They couldn't chain down the river channel.

Q. I am asking about the 64th mile, on a course of 75° West, would it be easy to go through that country there marking and chaining as you went, or would it be too rough to prevent their working?

A. Well, it would be too rough to chain and mark on that one course all the way.

Q. Do you see anything in these notes that indicates to you that that course was adopted of taking the bearings between two points at considerable distances and then chaining around the meanders of mountain or river to get to it?

A. Well, that seems to be the policy pursued all the way through, except right at the beginning they took more sights in a mile, and then after a few miles they evidently hurried up on their work, and took longer sights and thus obtained I might say more approximate courses and distances, and evidently gained time by that.

Q. How does that course of South 75° West from the 64th mile tree correspond with the course shown for that line on the map of 1821?

A. Well, that agrees with it approximately according to the scale of the plat.

1027 Q. In what general direction would it be relative to the direction from the 64th mile tree to the top of Big Fodder Stack?

A. It is very close to Big Fodder Stack—in the same general direction as Big Fodder Stack.

Q. I observe from reading these field notes of William Davenport that while going a distance of five miles from the mouth of the creek at the Tennessee River, the end of a call is once or twice given on the eastern side of that creek, and once or twice given on the western side of the creek, the west bank, what does that indicate that they did in relation to the creek?

A. They could cross the creek without difficulty; that is there are so many rocks in the bed of the creek, unless the water is very high a person can easily jump from one rock to another, and cross from one bank to the other; that is evidently what they did.

Q. You know that the Slick Rock Creek is such a stream that that could be done that way?

A. Yes, I have been along that stream, and up and down it.

Q. Suppose you should try that plan with the Cheoah River starting at its mouth and going up it for five miles, could you accomplish that with any reasonable means?

A. No, it is almost impossible to cross that stream without a boat. Of course a man can by taking off his clothes swim across, but I would say that it was a reckless operation.

Q. Can you conceive any reason why a surveyor going up the Cheoah River, if such had been the case, would either get a boat in that wild country or take off his clothing and swim across it two or three times?

A. Why, no, they would naturally follow along one (1) bank of the river.

Q. Is there any reason about the Slick Rock Creek that you would leave it, if you have to cross the Slick Rock Creek, in going up it from time to time?

A. Well, yes, the banks are rather precipitous, and they might come to a bluff where they would go around easier by crossing the stream, and then crossing back again further up.

Q. I see that in the William Davenport field notes the stream spoken of as a creek is not mentioned after the 70th mile is reached; what does that indicate?

1028 A. Well, evidently they left the creek before the 72nd mile. For instance, in these notes it states on a ridge between the aforesaid creek and Citico Creek, and so they evidently left the creek somewhere near the 70th mile and went up on to this ridge.

Q. Look at the map of 1821, it appears there as if they had gone up that creek only a distance of a mile and a half or something like that, as shown by the scale, and then that the creek had turned off almost directly to the left; do you observe that?

A. Why, yes, the creek apparently swings off to the left there.

Q. Now take that portion of the creek from the Tennessee River up as far as it and the line are coincident, and how does that tally with Slick Rock Creek's actual location?

A. Well, that tallies very closely.

Q. But take the line—that portion of the creek after the line leaves it, and the creek is left—on the left hand—is there any stream in that country that would tally with that particular portion as platted in the map of 1821 as to direction?

A. No, except possibly some small prong of Slick Rock Creek.

Q. Would any main creek do that in that country?

A. No.

Q. Then how do you account for that difference in there between the field notes and the map of 1821?

A. Well, I should account for it by the fact that the man that actually drew this map may have drawn it without consulting the notes carefully; that is he may not have been one of the surveyors, and may have just sketched the creek in carelessly.

The defendant objects to this testimony of the witness and like answers heretofore given, attempting to place his construction upon these alleged field notes because: 1st, said field notes are not competent evidence; 2nd, that it is not competent for this witness to give his opinion and draw his deductions therefrom thereby attempting to add to the face of them; and 3rd, the witness has already been examined in relation to these field notes in his re-direct and re-cross examination at Washington in January, 1911.

1029 Q. Do you see anything on this map of 1821 to lead you to suppose that the streams there had been sketched in carelessly?

A. Well, yes, for instance, the width of the Tennessee River which is represented on here as being, I should say, about half a mile wide; that is evidently carelessness on the part of the draughtsman; it is only three or four hundred feet wide at that point. And then the general appearance of the map—of course the mountain ridges and the streams are very roughly drawn, and the map and the plat. As I say the general appearance of the streams. But this dividing line was rather accurate.

Q. Would you infer from those facts that you observe on the map that those streams had been actually surveyed in 1821 or that the sketching in was merely from a general observation and guess work?

A. Well, they were evidently sketched in from general observation.

The defendant objects to the answer of the witness for the same reason that it is a mere guess upon his part and is not predicated upon any personal knowledge either of the location or said streams as he has shown himself or a survey thereof by himself.

Q. Now if you should take these field notes of 1821 of William Davenport and starting at the 65th mile on the bank of the Tennessee River, and follow them till it reaches what is there called for at the end of the 75th mile as Main Mountain, a beech, how would they correspond with the map of 1821 for a corresponding portion of the territory of the line?

A. Well, it would agree very closely, might not exactly, but in a general way I should say that they would agree very closely indeed; that is the general courses and distances.

Q. Suppose you were to take your different courses and distances given from the 65th to the 75th mile of the William Davenport field notes and compare them with the contention of the State of Tennessee to go up the Hang Over Ridge, how would they tally with Tennessee's contention?

A. Well, they would not tally with that contention at all. There would be no point of resemblance.

Q. Suppose you should take those field notes and attempt to make them go up the Cheoah River for any distance whatever
1030 and use their courses and distances only, and then compare them with the line of Slick Rock Creek which would the courses and distances coincide with?

A. As I say the courses and distances in these William Davenport notes would coincide closely with the line up Slick Rock Creek, and not with the line up Cheoah River.

Q. Now I see that when those field notes of William Davenport reached the 72nd mile they say "on a ridge between the aforesaid creek and Citico Creek." Would that call coincide with the line as run up Slick Rock Creek for five miles, and then up the Big Fodder Stack, and on to junction, or how nearly would it coincide with it?

A. Well, it would coincide with that route up over the Fodder Stack, and then South to the Junction.

Q. Would it coincide with a line run from the Hang Over Ridge as Tennessee claims it should go?

A. No. Slick Rock Creek is on the west side of the Hang Over Lead, and the waters of Citico cannot head in Hang Over Lead.

Q. Then taking those field notes of William Davenport and starting at the 64th mile, and ending at the point called for as 75th mile, how does that tally with the North Carolina contention that begins about a mile on the north side of Tennessee River and runs across it at the mouth of Slick Rock Creek, and up that creek for five miles, and thence by way of Big Fodder Stack to Junction?

A. The notes tally as closely as one could possibly expect notes thus obtained at that time to tally.

Q. Would the general shape of such a line coincide with the general shape of North Carolina's contention with that portion of the boundary line?

A. Yes.

Q. How would those notes tally with Tennessee's contention to go straight from that point North of the Tennessee River crossing and running up by the Hang Over line ending at the junction of Main Mountain?

A. Well, they would not tally with that because the line according to the Tennessee contention swings more to the east.

Q. Would it make a different shaped line?

A. Yes, very much different.

1031 Q. Then on this Slick Rock Creek country do these field notes of 1821 of William Davenport confirm the contention of North Carolina or of Tennessee as to the location of the North Carolina boundary line?

A. They confirm the location of North Carolina.

The defendant objects to the answer of the witness because the same is a mere deduction of his own, and it is a question for the Court to determine as to what is the legal effect of the papers referred to and because, further, the papers themselves are not competent evidence in this lawsuit.

Q. How do these recently discovered field notes of William Davenport coincide with the conclusion that you have reached as to the true location of the boundary line between North Carolina and Tennessee in the Slick Rock country before you had ever heard of their existence but after you had been over the line?

A. Well, they confirm my deductions that I made from the line as I found it marked on the ground. I found the marked trees on the route indicated by those notes.

Q. Do they or do they not coincide with the marked line marked as state line of 1821 was reported to be marked?

A. Yes they confirm that.

Defendant objects to this answer for the same reasons stated above and an endeavor to substitute the opinion of the witness for the judgement of the court in reference to the matters in controversy.

Q. Do you know of any state line in that territory that could be as old as 1821 marked as state line marks?

A. No.

Q. How do these notes of William Davenport of 1821 tally with the plat heretofore filed in this case as made by you and Mr. Burns?

A. Why they tally, as I said, very closely, as close as one could expect from notes made at that time—ninety years ago.

Q. Have you ever seen this comparative plat made by Mr. Burns, marked Exhibit "BB."

A. Yes, I have examined that.

1032 Q. How carefully have you examined it?

A. Well, I have examined it in considerable detail along the disputed portions of the line.

Q. The first part marked number one purports to be a tracing of a portion of the line made by the commissioners of 1821; how nearly does that tally with that line of 1821 from the map that you have seen of 1821?

A. Why, that tallied exactly with that map which I have seen before.

Q. Number two says "a part of the surveyed line as claimed by North Carolina." How does that tally with the line of marked trees through there which you say represents the claim of North Carolina?

A. That tallies exactly with that line over which I have been and surveyed.

Q. Number three on that exhibit shows the Tennessee contention; how does that tally with the Tennessee contention, as you understand that contention to be?

A. That agrees with my idea of the Tennessee contention.

Q. And number — on that exhibit is a plat of that portion of the territory through the Slick Rock country made by the William Davenport field notes. How do they tally with those field notes, that line?

A. That line is a careful plot made from those field notes.

Q. Now I see that from the William Davenport field notes there is a call for a holly tree, 86th mile, near the head of the middle fork of Tellico River; do you know of any holly tree in there anywhere?

A. Yes.

Defendant objects to any answer to this question because the witness has already been examined very fully in relation thereto both in his original examination and upon re-direct examination in Washington, when an alleged copy of the field notes were at his disposal, and after he had conferenced with respect thereto with counsel for North Carolina, and with Mr. Burns, the expert witness for North Carolina.

A. Shall I answer?

Q. Yes, answer now, please.

A. These notes in that respect confirm exactly my location
1033 of that 86th mile tree near the head waters of the Tellico River; that is a holly tree marked 86th M. and so they confirm the location of that tree exactly.

Q. That is the tree——

A. The tree still is in existence, and I saw it myself a year ago.

Q. You have heretofore testified about that tree as bearing the marks "86 M."

A. Yes.

Q. Now I wish you would take the course of the William Davenport field notes and distances as given in them for the territory near the head waters of Tellico in dispute between North Carolina and Tennessee, and say whether those notes coincide with the North Carolina contention of the location of the state line at that place or with the Tennessee contention of the location of the state line there?

A. Why they confirm the location of the North Carolina contention; that is the general courses are southwest and according to the Tennessee contention some of the courses are southeast around the head of Tellico.

Q. How do those William Davenport field notes coincide with the marked line through there, marked with old marks as state line of 1821, as you find it?

A. They confirm my survey of April and May, 1910, according to the general courses and distances, and according to the line as found marked on the ground.

Q. How do they tally with the shape as shown by the map of 1821 for a line at that place?

A. They agree exactly according to the scale of the plat around the head of Tellico.

Cross-examination.

By Gen. CATES:

Q. Mr. Gannett, you are the same S. S. Gannett, who was cross-examined by the Attorney General of Tennessee, and re-examined by Mr. C. B. Matthews of counsel for North Carolina, in Washington, in or about January 20, 1911, are you not?

A. Yes.

1034 Q. And while the record of your testimony is not before me, and doesn't seem to be present, my recollection is that you testified at that time that prior to your cross examination and re-examination you had been furnished with what purported to be a copy of Davenport's Field notes by the witness Burns?

A. Why, a copy had been sent to me; yes.

Q. By Mr. Burns, Mr. D. B. Burns?

A. Yes.

Q. And you were examined by Mr. Matthews in relation to the bearing of those field notes, were you not?

A. Yes.

Q. Yes. And re-examined—re-cross examined by the Attorney General of Tennessee?

A. Yes.

Q. Now on this examination you have been asked by Mr. Sondley at what course the line claimed by Tennessee approached the river

on the north side, and I believe you stated that it was about South 30° West; did you not?

A. Well, yes, I gave that from memory principally.

Q. You knew the line claimed by Tennessee is that marked line on the north bank of the river ending at the marked fore and aft tree, do you not?

A. Yes, down there near the bank of the river; yes.

Q. Yes.

A. Yes.

Q. Don't you know that the bearing of that line, according to your own survey, the last call of it is South 49° 24½' West?

A. Well, that is according to one bearing. What I referred to was where the line as contended for by Tennessee crosses the river, that is from the north bank to the south bank, as being in a general way South 30° West.

Q. Do you know exactly where Tennessee claims the line to be on the south bank of the river?

A. Well, I think I do; that is, from where that marked fore and aft tree is, crossing the river directly to a high bluff.

Q. Well, there is a bluff all along the river on the south
1035 side, isn't there?

A. Yes, sir, a bluff which leads up to a ridge, which leads up to the Hangover, and Hayo.

Q. So then you didn't mean to be understood as saying that the line as claimed by Tennessee on the north bank of the river and running down to that marked fore and aft tree was South 30° West?

A. Well, no, because, of course, I had no notes to refer to when I made that answer, but what I intended was the line crossing the river, or the course of the line crossing the river.

Q. Now what did you take that from South 30° West?

A. As I say, from memory.

Q. And a mere guess, isn't it?

A. It isn't a guess exactly.

Q. Did you ever take the course of the Tennessee line crossing the river there at that particular point?

A. Not with a compass.

Q. So then it is a mere guess?

A. I say I give it as a general statement, approximately.

Q. I believe that you have testified that you commenced surveying at the 59th mile tree?

A. Yes.

Q. These alleged Danvenport field notes call for a red oak at the end of the 59th mile; did you find any such tree there?

A. Well, I found an oak; yes.

Q. A red oak?

A. Well, I think I called it in my notes a mountain oak, if I remember.

Q. Where are your notes?

A. (Referring to book:) Well, yes, I called it a mountain oak. It is not a chestnut, or chestnut oak, or it is not a pine; it is an oak of some kind.

Q. It isn't a red oak there is it.

A. Well that man might have called it a red oak, that is Davenport.

Q. Well did you find any 59 on it?

A. Yes, there was a 59 on it.

1036 Q. There was a 59th on it?

A. Yes, sir, 59 on it.

Q. Anything else?

A. Let's see. No, the only note I have is 59.

Q. No "M" on it?

A. No the figures are about a foot high. They are large figures.

Q. About a foot high?

A. Yes, it *a* a large tree, thirty-six inches in diameter.

Q. But no "M" on it?

A. No, sir.

Q. Just fifty-nine?

A. That is the only record I have: fifty nine: the figures are about one foot high.

Q. Now you ran that line, as I understand it, from the 59th mile tree down to the road leading from Blount County, Tennessee, over into Swain County, North Carolina, or from Swain County over into Blount County?

A. Yes, I ran that.

Q. Now did you survey a line between that road and the Tennessee River, or just adopt Burns' survey?

A. I went along the line. I didn't survey it in detail.

Q. You took Mr. Burns survey as being sufficiently accurate for your purpose?

A. Yes, and I tested his line. I had his notes with me and I verified his notes along the line.

Q. Mr. Gannett, the call in this copy of the alleged Davenport notes, crossing the river, and covering as it is claimed, the 65th mile, is as follows: "South 75° West 320 poles, crossing Tennessee River to a large white pine, south side of the river, at the mouth of a large creek, 65th mile." Now do you understand that to be below the mouth of the creek or above the mouth of the creek?

A. It says "At the mouth of a large creek, 65th mile."

Q. Well?

A. Of course——

1037 Q. That don't mean in the creek does it?

A. Why, no, it would be right on one bank, right close to the creek.

Q. Now on which bank?

A. It don't say bank.

Q. It doesn't say bank. It doesn't say whether it is on the Tennessee River below the mouth of Tennessee River, above the mouth of the creek, does it?

A. No.

Q. And that point is left indefinite?

A. Yes.

Q. Now then the river, I believe you said, at that place was about 300 feet wide?

A. It is over 300 feet wide.

Q. Well assuming it is 400 feet wide at that point, then there is about 4700 feet of that line crossing the river that is north of the Tennessee River, isn't there?

A. Yes, that is following along the bank of the river.

Q. I don't mean following around the bank of the river; that line is a straight line, as called for in the Davenport field notes—alleged Davenport notes,—if 400 feet of that line is consumed in crossing the river the remainder, 4700 feet, is north of the river, isn't it?

A. Well, yes, following along the river.

Q. That call don't say "following along the river," does it?

A. I know the call does—might indicate that they went right down the river; that is went in a straight course.

Q. The map don't indicate that they went down the river, does it? The map indicates that they crossed the river in a straight line?

A. Yes.

Q. Yes.

A. Yes, the map indicates that they crossed it in a straight line.

Q. Now then if there is 4700 feet of that line north of the river it is 4700 feet from the North bank of the River to the 64th mile tree, isn't it?

1038 A. Yes.

Q. All right.

A. Approximately.

Q. On that course South 75° West?

A. Yes.

Q. Or reversing the course it is North 75° East?

A. Yes.

Q. That is the 64th mile tree would be 4700 feet North 75° East from the bank of the river opposite the mouth of Slick Rock Creek, wouldn't it?

A. Approximately correct; yes.

Q. Yes; all right. Now how far would that point be measured 4700 feet North 75° East from the north bank of the river opposite Slick Rock Creek, be from that marked fore and aft tree, that is up there on the line as contended for by Tennessee, up there on the bank of the river on the line contended for by Tennessee?

A. Well, I should say it was several hundred feet up the bank, up on the bluffs; that is up the ridge from the river.

Q. Now here——

A. From my knowledge of the line.

Q. Take this map here. (Indicating) As a matter of fact such a point 4700 feet northwest from a point on the Tennessee River North 75° East from a point on the Tennessee opposite the mouth of Slick Rock Creek, would be about three-quarters of a mile from that marked fore and aft hemlock tree on the north bank of the river where Tennessee claims the line crosses the river, wouldn't it?

A. Why it is according to this old plat as indicated on this plat, the Davenport notes.

Q. Now Mr. Gannett, you never surveyed Slick Rock Creek, did you?

A. No, I didn't survey it in detail. I went along and verified Burns' survey.

Q. What do you mean by verifying Burns' survey?

A. Well, I had his notes and where he said there was a marked tree, I identified that tree; in places where he gave a certain course and a certain distance between stations, I would actually
1039 measure that distance and measure the course.

Q. Well, didn't he give courses and distances between every station?

A. Yes, he did.

Q. But you didn't measure all of them?

A. I say by verifying, picked out any point in his notes or in his line and verified that particular course and distance, and satisfied myself that it was correct.

Q. Did he have the stations marked and numbered on the ground?

A. He did.

Q. Stations numbered on the ground?

A. Yes.

Q. How did he have the stations numbered on the ground?

A. Stake driven in and a second stake with the number of the station.

Q. With the number of the station?

A. Yes.

Q. With the number of the station, and all standing there?

A. Yes.

Q. On both sides of the creek?

A. Well, at different points I found some of them.

Q. The line is surveyed, according, to his notes that you have had, just running on both sides of the creek?

A. He had lines running on both sides of the creek.

Q. I believe you stated, Mr. Gannett, that this sketch number one on Exhibit "B" B to Burns' testimony given yesterday is an exact reproduction of the line as shown on the map of 1821 from the 59th mile tree to the Georgia line?

A. It is reproduction; yes.

Q. Don't show Tellico River on there, does it?

A. No.

Q. Not.

A. It is a reproduction of the line; it is without all those mountains.

Q. It has on this stream marked creek on it?

A. It has a stream marked creek.

Q. Yes. Now, I believe you stated that this sketch number
1040 four on Burns Exhibit "BB" is an exact sketch of the line as made from the Davenport field notes, so-called?

A. Yes, it is a sketch. It is exact according to that scale. It is a small scale.

Q. Now since you didn't survey this creek as it is, since you didn't survey Slick Rock Creek why you don't know whether this stream

that is marked a creek on this sketch number four is put down there from any actual survey or not, do you?

A. Well, no I can't say that I do.

Q. It certainly isn't put down from Burns' survey?

A. Yes, sir.

Q. Yes, sir; these here?

A. Well, that is put down from the Davenport notes.

Q. Are you certain of that?

A. Why it states following up said creek for five miles, that is the original book.

Q. Now show me where in that book it says "following up the creek five miles."

A. Well it says up "said creek from the 65th mile."

Q. All right. Just find where it says "following up said creek five miles."

A. Not in those words.

Q. That is your deduction from the statements contained in that book?

A. The statement in that book says "up said creek."

Q. Well that is just one call, isn't it?

A. That is the first mile.

Q. Do you mean to say, Mr. Gannett, that there is any statement in this book that says up the creek five miles.

A. Not in those words; for instance at the 69th mile it says "maple on the east bank of said creek, 69th mile."

Q. All right. All right, so your statement that the field notes said up the creek five miles was your deduction from other statements in the book?

A. I didn't make the statement "up said creek five miles."

1041 Q. You never made the statement "up said creek five miles." All right we will leave it for the stenographer to transcribe. So you didn't mean to make that statement anyway?

A. Well there are the notes, you can verify the statement from the notes, the original notes.

Q. All right; do you mean to say now looking down here in this first mile, the first mile of this sketch number four, south of the river,—how many times does that line there cross the creek as put down here in this sketch number four?

A. The line practically follows up the creek.

Q. Well, don't it cross the creek twice according to this sketch?

A. The creek as stated on this exhibit—the creek is sketched in.

Q. Answer my question; don't that first mile sketched in there south of the creek show that it crosses the creek twice?

A. Yes, you might accept that.

Q. Now then—now the second mile, the end of the second mile south of the creek, according to this sketch number four made by Burns, he has got the second mile, or the 67th mile on the east bank of that creek, hasn't he?

A. As I say, the line practically follows the creek.

Q. But he has given that second mile south of the river being the

67th mile, according to your claim, as being on the east bank of the creek, hasn't he?

Q. But he has given that second mile south of the river, being the 67th mile, according to your claim, as being on the east bank of the creek, hasn't he?

A. There is the west point—just on the east bank of the creek.

Q. Don't that little bit of a circle on there indicate the second mile south of the creek?

A. Yes.

Q. And that is on the east bank of the creek?

A. Yes, just a fraction of an inch; a very small fraction of an inch.

Q. Now between the 66th mile circle and the 67th mile circle shown on this sketch number four, assuming the one immediately south of the river to be the 65th, how many times in that
1042 second mile has he got that line crossing that creek?

A. Why, as I say the line practically follows right up the creek, that is the width of the line, possibly is even a little wider than the creek as indicated here. You can't say that it crosses any number of times. It practically follows the bed of the creek.

Q. Yes. Now up here at this 68th mile there is no doubt about the 68th mile circle, him having that on the east bank of the creek, is there?

A. No that is the 68th right in the creek; this is the 69th (indicating).

Q. Here. All right.

A. The 69th is east of the creek.

Q. I am talking about this little sketch; where has he the 68th mile circle?

A. The 68th mile circle is right in the creek.

Q. The 68th mile circle is right in the creek?

A. Well, yes.

Q. And where has he got the 69th mile circle?

A. The 69th mile circle is just southeast of the creek.

Q. On the east bank of the creek?

A. Yes.

Q. All right. Now he has got the 70th mile circle on the west bank of the creek?

A. Yes.

Q. A straight line from the 69th mile circle?

A. Yes.

Q. Crossing the creek?

A. Yes.

Q. Yes.

A. Yes, that is right.

Q. And there — not anything on that map of 1821 showing that the line between the 69th and 70th mile circles cross the creek, is there?

A. No.

Q. And there is not anything on that map of 1821 that indi-

cates that the 69th mile circle was on the east bank of the creek, is there?

A. No.

1043 Q. The fact is that according to that map of 1821 the 69th mile circle is on top of a mountain, isn't it?

A. It is on some kind of a ridge.

Q. And some two miles or two miles and a half west of the stream shown on that map of 1821 marked creek, isn't it?

A. Yes.

Q. Now, Mr. Gannett, now I believe you stated in answer to Mr. Sondley's question on your direct examination that this line of the 65th mile, as it purports to be set out in these alleged Davenport field notes South 75° West is approximately—here is what we are talking about (indicating)—is approximately in the direction of Fodder Stack, didn't you?

A. You can verify that by referring to the notes.

Q. Well you were being examined as to about how nearly that conformed to the general direction and theory of North Carolina, and didn't you state in substance that that line crossed the river approximately in the direction of Fodder Stack?

A. Well, it is approximately, but it isn't exactly. It is southwest. Fodder Stack is Southwest. Fodder Stack would be more nearly South 45° or 50° West, and not South 70° West.

Q. So do you——

A. It is not southeast.

Q. Do you call a difference of some twenty-five or thirty degrees approximately the same?

A. Well, yes, it is not southeast, it is southwest.

Q. That is what I want to understand. When you make a statement that it is approximately the same as another, you mean that it is within at least thirty degrees of being the same as the other, is that it?

A. Yes.

Q. Then according to that reasoning the line crossing the Tennessee River pursuant to the Tennessee contention is approximately the same as the other, isn't it, that is it is within about thirty degrees of the other?

A. Well, no, because it might for one course possibly, but the general trend of the line would be entirely different.

Q. Well, then you mean that anything that is southwest

1044 is, according to the general trend?

A. Well, the general trend of the mountain is southwest.

Q. Then anything that is southwest conforms to the general trend?

A. Yes.

Q. Yes. In this line running from Fodder Stack out to the junction is a southeast line, isn't it?

A. Well, for a short distance there.

Q. Some seven miles?

A. Yes.

Q. Southeast, isn't it?

A. It has a southeasterly bearing.

Q. Now then that don't conform to the general trend does it?
A. Well in that particular case.
Q. But that is what I am talking about.
A. There is an elbow in the main divide.
Q. Then at least that much of the North Carolina contention doesn't conform to the general trend?
A. Yes; there is that much of an exception.
Q. Don't you think there is some mistake about that?
A. The Lord made it. Mistake in what way?
Q. Now if you are going to put it on the Lord I haven't anything more to say about that. Now you stated that this sketch number four, I believe, was made there exactly from these Davenport field notes, didn't you?
A. I say it is made from those field notes, plotted according to that scale.
Q. Don't you know that the last call in the 72nd mile as shown by this sketch number four is South 30° East, when the field notes call for South 30° West?
A. Yes, there appears to be a minor error.
Q. How long is that call South 30° West?
A. A quarter of a mile.
Q. A quarter of a mile?
A. Yes.
Q. That quarter of a mile would run down considerably on
1045 the west side of the Fodder Stack, wouldn't it have extended South 30° West.
A. Run down off the mountain; yes.
Q. Yes.
A. A quarter of a mile.
Q. So then to that extent it don't conform to the Davenport field notes; does it?
A. No, that is an imperfection.
Q. An imperfection in the map or the field notes? Of course it must be an imperfection in the field notes, because it couldn't be an imperfection in Mr. Burns' map; is that what you mean?
A. Well there is a discrepancy.
Q. A discrepancy between the map and the field notes?
A. Yes.
Q. Now if the draughtsman of this sketch number four had extended that line in accordance with the notes South 30° West 80 poles, why the balance of the line all the way down to the Georgia boundary would not conform to this sketch, and the remainder of this sketch number would it?
A. It would be thrown out at this 72nd mile about an eighth of an inch there.
Q. And in a different direction?
A. But it wouldn't affect the general course of the balance of the plat though, to any great extent. It would only swing it a very little.
Q. Well it would swing it out thirty degrees west instead of thirty degrees east, wouldn't it?
A. It wouldn't swing the whole plat out thirty degrees. It would

only swing that little shot. It wouldn't throw the whole plat out thirty degrees.

Q. Just throw that——

A. That one shot or one course out.

Q. Do you mean that all the remainder of the course would be just like there on this plat?

A. Why, yes, they would be thrown out a little. They wouldn't be thrown out thirty degrees. They would only be swung out a quarter of a mile in thirty miles.

1046 Q. It isn't only a quarter of a mile, but a change of course. Do you mean to say that wouldn't make more than a difference of a quarter of a mile?

A. That is all it is. It is one-eighth of an inch on this particular plat.

Q. Well, it would have this effect. 80 poles South 30° West there would carry you down on to the side of Fodder Stack Ridge, wouldn't it?

A. Yes.

Q. On the west side?

A. I admit that imperfection in the notes.

Q. Answer my question; it would carry you down a quarter of a mile on the west side of the Fodder Stack Ridge, wouldn't it?

A. Yes, sir.

Q. Then pursuing calls from thereon, they would be all on the side of the mountain instead of on the top of the mountain, wouldn't they?

A. Simply have to admit that there was a mistake in that one call. The Surveyor had to follow the top of the mountain.

Q. But suppose it is not a mistake. You are assuming that it is an imperfection. But suppose that you run down there South 30° West 80 poles, and then from that point around the various courses and distances, you never would get back on top of the mountain, would you?

A. Well, he might not. He would be perhaps——

Q. On the side?

A. A little on one side.

Q. On the west side?

A. Yes.

Q. And at least a quarter of a mile from the summit?

A. Yes, and then North Carolina would get more territory from Tennessee.

Q. Don't you be troubled about that; just let Tennessee and the court be troubled about that.

A. Yes.

Q. Is it any great concern to you about how much North Carolina gets off of Tennessee?

A. Not a particle.

1047 Q. Or how much the Hopkins claimants recover?

A. Not a particle.

Q. I suppose it isn't of any personal interest to you?

A. Not in the least.

Q. Although you are employed by the Hopkins claimants?

A. No, sir. I am entirely disinterested. I don't care a continental who wins.

Q. Now I believe you said that you didn't make the survey between the big road or county road or path on the north side of the river, and the north bank but adopted Mr. Burns' survey.

A. Yes, I went over the line in detail thereafter.

Q. You know about where three-quarters of a mile from that marked fore and aft tree northeast of the line would be, wouldn't you?

A. Yes.

Q. Indicate about the point?

A. It is up on the bluff.

Q. On the ridge?

A. On the ridge.

Q. Now isn't it a fact from about, a point about three quarters of a mile northeast of that fore and aft hemlock tree you could easily run a line down to the mouth of Cheoah River?

A. Why, following down the ridge down the meanders of the ridge.

Q. Couldn't you run a direct line?

A. Not in one sight, no, you could not.

Q. But you did go from that oak?

A. I went over the line of it. Although you could see the line,—you could sight to it, but you couldn't follow the sight.

Q. You mean you could—d- you say that from a point three-quarters of a mile north of the river on the marked boundary line, you could see the mouth of the Cheoah River?

A. I wouldn't say three-quarters of a mile from the river. It is about three quarters of a mile or a mile from the mouth of Slick Rock Creek which would throw you up on the ridge. You wouldn't be three-quarters of a mile from the river, but you would be several hundred feet up from the River, and a mile from the mouth of the creek. I believe you would see the mouth of the creek from such a point.

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Q. You don't speak of it from any personal recollection of it, do you?

A. Yes, I would say that at a point up on the bluff there, or on the ridge, perhaps 800 feet higher than the river, you would look down the valley of the river and for quite a distance, and if the foilage was not too thick, I certainly believe you could see the mouth of the creek.

Q. You don't know how the foilage was in August, 1821?

A. No.

Q. Well did you ever try to run a line from such point up on the marked line north of the river down to Slick Rock Creek?

A. I didn't survey the line in detail, but I went over the line.

Q. Don't you know that the topography is such that they could have run a line, that is a straight line from almost any point on the marked boundary line, for a mile north of the river down to the mouth of Slick Rock Creek?

A. A straight line?

Q. Yes.

Q. No. They would come down the ridge, to the river. One would have to follow the river part of the distance.

Q. You mean to say that they did mark the line down to the river itself, do you?

A. They did mark the line down to the river and along the banks of the river.

Q. And they couldn't mark that a straight line?

A. No, they couldn't mark an absolutely straight line.

Q. That is what you mean to say, they couldn't mark a straight line?

A. Yes.

Q. Such as appears in these alleged field notes crossing the river on a course of South 75° West; you mean they couldn't mark that line North of the river?

A. I say that a part of the line would be in the river itself.

Q. Well, I know about 400 feet of it would be in the river, but couldn't they run and mark the remainder, 4700 feet, of that line?

1049 A. Well, they did mark part of the line.

Q. But they didn't mark a straight line?

A. Why, no, because the line, as marked, follow- the meanders of the mountain.

Q. But then the line as marked don't conform to the calls of these field notes?

A. Why, no, as I have explained before in previous testimony they must have sighted from one summit to another, and then followed around the crest of the mountain and marked along the crest of the mountain.

Q. That is your deduction?

A. Yes, sir.

Q. Now then if that be true the line surveyed around would be much longer than a mile, wouldn't it?

A. Well, yes, the line if measured around the bends would be longer than a line—direct line.

Q. Then a direct sight for 320 poles between two points will be much longer than a mile?

A. Yes, then an actually measured mile, would be longer.

Q. When did you come to Asheville, Mr. Gannett, this time?

A. Why, Saturday the 29th of April.

Q. Was this exhibit "BB" already prepared when you got here—this exhibit "B" "B" already prepared when you got here to Burns' deposition?

A. It was partly prepared, not entirely completed.

Q. How much of it was prepared?

A. The main——

Q. The four sketches?

A. Three sketches were prepared and most of this sketch number four of Exhibit "BB" was prepared. No drainage was shown on this part, number four of the exhibit.

Q. No what?

A. None of this drainage was shown at the time that I first saw it.
Q. What do you mean by drainage?
A. That is the Tennessee River and this creek between the 65th and 70th mile.

1050 Redirect examination.

By Mr. SONDLEY:

Q. Mr. Gannett, in the undisputed portion of the line between North Carolina and Tennessee which you went over, did the marked line follow the meanders of the mountain?
A. Yes, sir.
Q. Does the map of 1821, or the Davenport field notes or any other survey that you have seen before that of Mr. Burns exactly conform to every deviation in the ridge?
A. Why, no.
Q. Is it common in surveying lines, or was it common years ago, in mountain countries to mark every deviation of the ridge?
A. Of course I can speak from personal experience of surveying, but it isn't possible to make a survey follow every deviation of a mountain top. They are bound to go from one little crest to another.
Q. Is it considered in engineering circles an error in field notes if they call for a distance of forty or eighty poles where the mountain winds, and don't make every little turn in the mountain itself that they show on their figures, or treat it as a mark?
A. As I said, you have to generalize to some extent in every survey. You have to omit some little detail.
Q. And the more general the survey the more the little deviations are omitted?
A. Yes.
Q. And the general course taken for some little distance?
A. Yes, sir.
Q. Does that seem to you as a practical engineer to show that notes of a survey are incorrect because they do not mark every defination from a straight line?
A. No. It is not possible to make an absolutely correct survey, that is chaining every thousand feet.
Q. Now you were asked if this line that is called for at the 72nd mile vicinity as South 30° West, but which you think should be South 30° East, as I understand you?

1051 A. Yes.
Q. Were to be run South 30° West if it wouldn't leave the ridge?
A. Yes.
Q. And you said it would?
A. Yes.
Q. To that distance?
A. Yes.
Q. And would it leave also the marked line?
A. Yes, it would leave the marked line.
Q. Then you were asked if you should make that defination

going South 30° West instead of South 30° East and go with the ridge, if that wouldn't disarrange all of the rest of the courses clear to the Georgia line from the top, throw it off the top of the ridge. But suppose you found the next one or two calls calling for the main mountain; then wouldn't you understand that you had to go back on the top of the ridge to correct that error?

A. Why yes, you certainly would.

Q. Then it wouldn't disarrange all the subsequent calls, would it?

A. No, except it is an error in one course.

Q. Well, if you as a surveyor making any survey in the world, and following the course of the survey given you to follow, which were understood to be along the top of a ridge, and you found a marked line along the top of the ridge; and you found one thing that said South 30° West, when to follow the top of the ridge you had to make it South 30° East; what would you understand from that?

A. Well, I would accept the marked line of course.

Q. And understand that the notes were in error in regard to east and west?

A. Yes.

Q. Is it any unusual error, a thing of that sort?

A. No, sometimes that occurs quite often in the notes that have been submitted to me to examine.

Q. Now you said that if you were to start from a point on
1052 the ridge north of the river and go on the South 75° line called for there, you would be going the general direction of Fodder Stack mountain?

A. Well, yes, in a general way. It is a southwest course.

Q. Did you mean to say that though if you had a call South 75° West for ten poles, that you might go South 30° West for ten poles and consider it approximately the same?

A. Yes.

Q. I say would you consider that approximately correct? Suppose you had a call South——

A. Let me understand the question.

Q. Suppose you had a call South 30° West?

A. Yes.

Q. A distance of ten poles or twenty poles?

A. Yes.

Q. Would you then consider South 75° West as approximately correct?

A. No.

Q. Then you would make a difference between general directions and small distances?

A. Yes.

Q. When you spoke of this general direction towards the Fodder Stack Mountain, how far was Fodder Stack Mountain from that point on the river?

A. Seven or eight miles.

Q. But when they asked you if you wouldn't consider it approxi-

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mately correct in a mile to make a variance of 45°; would you say it was approximately correct in one mile?

A. Yes.

Q. Would you?

A. Yes.

Q. Now would you say consider it approximately correct to make a variance of 45 degrees in one mile of a measured line?

A. You mean a difference of forty-five degrees in one mile?

Q. In one mile?

A. Oh, no, that is not correct.

Q. So then the difference lies between your statement in
1053 one case in going seven or eight miles in a general direction and in the other a specific line marked for a shorter distance?

A. Yes.

Q. Now you were asked very closely about the creek crossing the line, or the line crossing the creek on this plat from the Davenport field notes near the Tennessee River, I wish you would look at that and tell me how you think that crosses the stream there anywhere, for I can't see any crossing or anything of the kind. It is an effort to make the two go along together.

A. Well, as I say, according to the drawing the line, which is fully as wide as the creek, the line practically follows the creek up to the 69th mile, and the 69th mile tree is evidently intended east or southeast of the creek. It isn't possible with that width of line represented to specify exactly how many times one line crossed the other; that is, one is practically on top of the other, or follows the other.

Q. Suppose you take the plat of 1821 and take its obvious courses there from point to point at some point in two of those mile circles, is that an exact compliance with every little bend in the mountain?

A. Well, no, as I say, on the scale on that plat you have to generalize. You can't indicate every detail of the mountain.

Q. I wish you would take this copy of the map of 1821, and see how many miles it counts out from where the Equoneetly Path to Cade's Cover crosses.—No, from the beginning until you reach the Equoneetly Path crossing to Cade's Cove? Count it and see how many miles there are?

A. Fifty-three.

Q. How many round circles did you find from the beginning to the Equoneetly Path crossing to Cade's Cove?

A. Why the number of circles which I consider mile circles are fifty-three.

Q. But how many did you find of round circles?

A. Of course there are actually fifty-four, but there are two that are so close together that I should not consider as being—as indicating a separate mile.

Q. Do you know whether they were designed for separate miles or not?

1054 A. I think not.

Q. Do you know?

A. I don't. No, sir.

Q. Very well. Now count the number of circles from the Equoneetly Path to Cade's Cove, or count the number of—count the dis-

tance by circles up to the Path to Tallassee marked there, and see how many.

A. Seven.

Q. Not even ones?

A. Yes, that is seven miles.

Q. You don't mean counting one at each end?

A. No, seven miles.

Recross-examination.

By Gen. CATES:

Q. You were asked about two circles on this map that appear very close together. Those are the same two circles that you have already testified were intended for one?

A. That is what I think.

Q. According to your opinion?

A. Yes.

Q. And treating them as one; treating them as one it is fifty-three miles from the beginning to the point on this map marked Equonectly Path to Cade's Cove, isn't it?

A. Yes.

Q. But treating those as two it is fifty-four miles to that point?

A. Yes.

Q. *Nof* if it be fifty-four miles to the point on the boundary line where the Equonectly Path to the Cade's Cove crosses it, then it is how many miles to the Tennessee River?

A. It would be sixty-six to the mile tree on the south bank of the Tennessee River.

Q. Yes, so if it be fifty-four miles to the Equonectly Path to Cade's Cove*r* that last mile circle north of the river is at the end of the 65th mile instead of the 64th mile?

1055 A. Yes.

Q. And the one on the south bank of the river would be the 66th mile?

A. Yes.

Re-redirect examination.

By Mr. SONDLEY:

Q. Now in testifying, Mr. Gannett, that that would make fifty-three miles, counting those two as one, you counted a circle at this Equonectly Path crossing it precisely on a circle, from that plat?

A. Well, the plat is so rough you couldn't say it could. Of course that seems—it would seem as if it would cross near that mile circle.

Q. And between that mile circle and the one southwest of it, wouldn't it?

A. Yes, between the 54th and 55th—53rd and 54th.

Q. The 53rd and 54th?

A. The 53rd and 54th; yes.

Re-recross-examination:

Q. But suppose the report of the commissioners calls for crossing this Equoneetly path at the 53rd mile, you would say crossing at 53rd mile, wouldn't you?

A. If I was calling it——

Q. And not the 54th?

A. No, it is evidently intended to be nearer the 53rd, I think.

Q. And it would not conform to the call in any field note which would make it call for crossing the Equoneetly Path at the 54th mile anywheres, about which there is no question; in other words, a call in a field note of 54 miles at the Equoneetly path to Cade's Cove would not be the equivalent to crossing the Equoneetly Path at 53 miles would it?

A. No.

Q. There would just be a difference of a mile there wouldn't there?

A. Yes.

1056 Mr. SONDLEY:

Q. Now, suppose, as a fact from the plat you see that the path did cross between the 53rd and 54th mile, wouldn't either be as approximately correct to call it either the 53rd or 54th, if it was between the two?

A. You could call it either one.

By Gen. CATES:

Q. But a call at 54th don't meant between 54 and 55, or between 53 and 54?

A. No, according to that expression you would think it nearer 53.

Q. It would have gone through right there?

A. Yes.

Q. Now look at this again, the tracing of this Equoneetly Path to Cade's Cove, crossing this boundary line; where do you say now without any help from Mr. Sondley or myself that line crosses the boundary line?

A. Why it crossed nearer that other—what you might call the 53rd mile.

Q. You mean at the 53rd mile?

A. Not at it but near it. According to that plat. As I say that plat is roughly drawn, and all the trail is not shown. You see the trail is not shown for nearly a mile, for a full mile on each side of the mountain.

By Mr. SONDLEY:

Q. If as a fact you had two documents and one called for a trail at the 53rd mile and the other called for it at the 54th, and you found the trail crossing between the 53rd and 54th, you wouldn't consider either document repudiated by the other, would you?

A. No.

By Mr. CATES:

Q. You wouldn't. Do you mean to say that you would consider Davenport's alleged field notes calling for the Equoneetly Path at 54 miles to be approximately conforming to the call of the report for crossing it at 53 miles?

A. Why, it wouldn't agree exactly for sure.

Q. Do you mean to say that it would be approximately conformation?

A. Why, yes, it would be within a few miles of it, one way or the other.

1057 Q. Then anything that is within a few miles on this boundary approximately conforms to it, is that what you mean?

A. As I have testified several times this plat——

Q. Answer my question—is within a few miles approximately conformation when applied to the North Carolina theory of this boundary?

A. No, sir.

Q. Is a mile approximately conformation according to your idea?

A. It depends entirely on what we are considering; what part of the line, or what portions of the line we are considering.

Q. And whose theory you are considering too, don't it?

A. Well——

Q. Just answer that question?

A. Why, no.

Q. Then sometimes a variance of thirty degrees approximately conforms and sometimes a variance of thirty degrees don't approximately conform; is that right?

A. Why depending on the scale of the plat, on the length of the line shown. For instance a little bit of a short line, if it was out you might not be able to measure the course perhaps closer than thirty degrees, on a very small scale, in a very short line.

Q. Well, now, you have had your explanation, answer the question; sometimes a variance of thirty degrees in a call approximately conforms to a call and sometimes it don't?

A. Yes; depending on the length of the line.

Q. And sometimes a variance of a mile approximately conforms and sometimes it don't?

A. Yes, depending entirely on the size of the area that you are dealing with.

S. S. GANNETT.

1058 Gen. DAVIDSON: Gentlemen, I desire to offer in evidence a certified copy from the Secretary of State of North Carolina, of a joint resolution adopted by the last General Assembly of North Carolina for what it is worth.

The State of North Carolina offered in evidence a certified copy of the Joint Resolution of the General Assembly of North Carolina at its session of 1911, such resolution being in the following words and figures:

"*Resolution No.* 50.

Joint Resolution authorizing the Governor to take proper action and pay necessary expenses incurred and to be incurred in the settlement of the disputed boundary line between the State of North Carolina and the State of Tennessee.

Whereas there has been pending for a number of years a controversy between the State of North Carolina and Tennessee in respect to the true location of the boundary line between those States west and southwest of the point where the said line crosses the Tennessee River; the said controversy arising out of the facts that the said line was run and located in the year one thousand eight hundred and twenty-*twenty*-one through a very mountainous and, at that time, a totally unsettled country, many of the mountain ranges and streams not having names or, if so, being unknown; and the commissioners who ran the line had no means of marking the same except upon the trees then growing in the forests; and many of which have been destroyed in the lapse of time, and the maps and field notes accompanying the same which were furnished by the commissioners to the State of North Carolina were destroyed in the fire which consumed the State Capitol in Raleigh in one thousand eight hundred and thirty-one, and for a long time it was not possible to find any evidence of the said plat or field notes in the archives of the State of Tennessee; and whereas, in consequence of the foregoing facts, much confusion, disorder, and litigation had for a number of years arisen and existed along the line above mentioned, and the settlement and development of the country has been greatly retarded in consequence thereof; and whereas the Governor of the State of North Carolina, on or about the nineteenth day of February, one thousand
1059 nine hundred and nine, directed the Attorney General of North Carolina to institute a suit in the Supreme Court of the United States against the State of Tennessee to establish the disputed boundary, and under the authority so given by the Governor the Attorney General did institute the said suit, which is now pending in the Supreme Court of the United States; and whereas there has been recently discovered among the archives of the State of Tennessee a pl-t or map of the said survey of one thousand eight hundred and twenty-*twenty*-one, furnished the State of Tennessee by the commissioners who made that survey, but no field notes explanatory thereof could be found; and whereas, quite recently, there has been found a copy of the said field notes among the private papers of William Davenport, Esquire, one of the surveyors on the part of North Carolina who made the said survey, and that said field notes are now in the possession of William Davenport Jones, Esquire, a descendant of William Davenport, who is ready to furnish them to the State of North Carolina:

Be it resolved by the General Assembly of the State of North Carolina:

1. That the Governor is authorized and directed to employ all the

powers and agencies of the State in the further prosecution of the said suit; and to draw his warrant upon the Treasurer of the State for such necessary expense as may be incurred on behalf of the State therein.

2. That the Governor be further requested and authorized to procure from the State of Tennessee a duly certified copy of the said recently discovered map or plat, and also the field notes above referred to; and cause the same to be recorded and filed in some proper place in the office of the Secretary of State, and to be printed, if it can conveniently be done, together with this resolution, in the proceedings of this session of this General Assembly.

The Governor shall certify to the Auditor the necessary expense of securing, copying, and recording the said map and field notes and other expense necessary to carry into effect the provisions of this section, and the Auditor shall draw his warrant on the Treasurer for payment of the same.

Ratified this the 8th day of March, A. D. 1911."

Filed and marked "Exhibit 3, G. A. T."

1060 NORTH CAROLINA,
Graham County:

To the Honorable Secretary of State:

Pursuant to an Act of the General Assembly, for the year 1897, entitled, "An Act to locate the line between North Carolina and Tennessee," We, H. P. Hyde, County Surveyor of Graham County, and F. M. Lovingood, County Surveyor of Cherokee County, have surveyed and located the boundary line between said counties in the State of North Carolina, and the State of Tennessee, according to the calls set out in chapter forty-one (XLI), Laws of 1821, and have distinctly located and marked said line from the South bank of the Tennessee River at the point where the line set out in said chapter forty-one (XLI), Acts of 1821, crosses said river, and at the mouth of Slick Rock Creek, and runs thence up said Creek to the lower point of the Big Fodder Stack Lead, being five miles one hundred and one poles from Tennessee River, thence up said Lead to the top of the Big Fodder Stack, thence up the divide between Slick Rock Creek in North Carolina, and Citico Creek in Tennessee, with the heights and peaks thereof, passing Rock Stack Knob and continuing to a point on said divide where it connects with a lead running from Haw Knob to the Bob Stratton Bald, and about one-half mile Southwest of said Bald, at which a stone is set up marked "N. C. 10 M." and is situate on the divide between the head waters of Slick Rock and Santeetla Creeks in North Carolina, and Citico Creek, in Tennessee, thence with the divide leading from the Bob Strutton Bald through the John Strutton Meadows to the Haw Knob, thence in a Southwest direction with the divide to Laurel Knob to what is known as State Line Ridge, thence down State Line Ridge to Tellico River, crossing said river, and thence up a ridge just opposite said State Line Ridge, in a Southwest direction passing an old holly tree at forty poles from said river, marked on the west side "86 M." and continuing to the

top of the dividing ridge leading to the Tennessee or Beaver Dam Bald, thence up said divide to the said Tennessee or Beaver Dam Bald, which Bald is on the Unacay or Unaka Mountain, at which point on said Bald a stone is set up marked "N. C. 25 M. 1897" whole distance from the beginning point at the Tennessee River twenty-five miles and one hundred and eleven poles, and more particularly described as follows:

1061 Beginning at a large rock on the South bank of Tennessee River on the West bank of Slick Rock Creek, which said rock is marked on the east side "N. C. 65 M," thence running South up said Creek as it meanders 54 poles, then S. 6 E. 24 poles, then S. 20 W. 20 poles, then S. 57 W. 30 poles, then S. 42 poles, then S. 60 W. 40 poles, then S. 17 E. 40 poles, then S. 22 W. 14 poles, then N. 60 W. 44 poles, then S. 85 W. 80 poles, then S. 59 W. 24 poles, then S. 58 poles, then S. 80 W. 40 poles, then S. 13 E. 40 poles, then S. 48 poles, then S. 35 E. 18 poles, then S. 26 W. 14 poles, then N. 62 W. crossing Slick Rock Trail at 10 poles, whole distance 20 poles, then N. 84 W. 22 poles, then S. 24 W. 44 poles, then N. 80 W. 16 poles, then N. 50 W. 52 poles, then west 20 poles, then S. 30 W. 10 poles to the mouth of Little Slick Rock Creek, then S. 10 W. 28 poles, the S. 30 W. passing the mouth of Nicholas Cove Branch at 44 poles, whole distance 76 poles, then S. 15 W. 56 poles, then S. 58 W. 24 poles, then S. 68 W. 14 poles, then N. 70 W. 16 poles, then N. 55 W. 30 poles, then N. 85 W. 12 poles, then S. 50 W. 14 poles, then S. 35 W. 10 poles, then S. 27 E. 20 poles, then S. 73 W. 10 poles, then N. 77 W. 30 poles, then N. 17 W. 20 poles, then N. 55 W. 18 poles, then S. 65 W. 14 poles, then S. 23 W. 24 poles, then S. 38 poles, then S. 50 W. crossing an old trail leading from Tennessee to Deputy place at 18 poles, same course whole distance 32 poles, then S. 32 poles, then S. 28 W. 20 poles, then N. 81 W. 20 poles, then S. 20 W. 24 poles, then S. 77 W. 10 poles, then N. 76 W. 28 poles, then S. 71 W. 12 poles, then S. 30 W. 16 poles, then S. 20 E., 8 poles, then S. 51 E. 26 poles, then S. 42 W. 24 poles, then S. 25 E. 8 poles, then N. 85 E. 12 poles, then S. 40 E. 8 poles, then S. 30 W. 16 poles, then S. 14 poles, then S. 37 W. 30 poles, then S. 10 E. 18 poles, passing falls in said creek, then S. 70 E. 8 poles, then S. 20 W. 14 poles, then S. 4 E. 14 poles, then S. 14 W. 34 poles, then S. 47 W. 26 poles, then S. 10 E. 14 poles, to a spruce pine on the west side of said Slick Rock Creek marked on the East side "N. C. 5 M," it being five miles 101 poles from the mouth of said Slick Rock Creek as it meanders, said pine tree being at the mouth of the first branch that heads north of Big Fodder Stack at the point of the ridge that leads to the said Big Fodder Stack, then with said ridge S. 11 W. 18 poles, then S. 5 E. 11 poles, then S. 32 W. 31 poles, then N. 65 W. up said ridge 14 poles,

1062 then N. 75 W. 14 poles, then S. 77 W. 14, then S. 72 W. 22 poles, then S. 38 W. 8 poles, then S. 12 W. 26 poles, then, S. 35 W. 13 poles, then S. 68 W. 12 poles, then S. 33 W. 14 poles, then S. 50 W. 20 poles, then S. 42 W. 16 poles, then S. 60 W. 30 poles, then S. 38 W. 34 poles, then S. 60 W. 22 poles, then S. 7 W. 10 poles, then, S. 32 W. 12 poles, then S. 25 W. 8 poles to a rock

marked on the East side "N. C. 6 M", then same course S. 25 W. 20 poles, then S. 35 W. 24 poles, then S. 60 W. 24 poles, then S. 50 W. 16 poles, then S. 77 W. 26 poles, then N. 82 W. 34 poles, then N. 59 W. 24 poles, then S. 80 W., 24 poles to a spruce pine, an old fore and aft tree on the Big Fodder Stack Lead, then W. 16 poles, then S. 57 W. 22 poles to the top of the Big Fodder Stack, then S. 25 E. 16 poles, then S. 5 E. 24 poles, then S. 30 E. 50 poles to a rock marked "N. C. 7 M", then same course S. 30 E. 28 poles, then S. 14 W. 52 poles, then S. 40 E. 20 poles, then S. 30 E. 25 poles, then S. 7 E. 8 poles, then S. 28 E. 34 poles, then S. 34 E. 18 poles, then S. 58 E. 20 poles, then S. 80 E. 28 poles, then S. 60 E. 36 poles, then S. 30 E. 6 poles, to the top of the Rock Stack, then S. 25 W. 18 poles, then S. 58 E. 13 poles, to a stone marked "N. C. 8 M.", then S. 12 E. 80 poles, then S. 13 W. 12 poles, to the Glen Cove Gap, then S. 10 poles, then S. 60 E. 12 poles, then S. 47 E. 10 poles, then N. 71 E. 24 poles, then S. 66 E. 52 poles, then S. 10 W. 12 poles, then S. 12 E. 6 poles, then S. 20 W. 20 poles, then S. 37 W. 26 poles, then S. 28 W. 32 poles, then S. 7 W. 10 poles, then S. 19 W. 4 poles to a stone marked "N. C. 9 M." then same course S. 19 W. 28 poles, then S. 17 E. 20 poles, then S. 42 E. 10 poles, then S. 61 E. 4 poles, then S. 46 E. 24 poles, then S. 13 E. 10 poles, then S. 3 W. 16 poles, then S. 15 W. 8 poles, then S. 8 E. 8 poles, then S. 24 E. 62 poles, then S. 3 W. 18 poles, then S. 25 W. 20 poles then S. 2 E. 16 poles, then S. 5 W. 14 poles, then S. 10 E. 26 poles, then S. 28 E. 14 poles, then S. 50 E. 18 poles, then S. 70 W. 4 poles, to a stone marked "N. C. 10 M." about one-half mile S. W. of Bob Stratton Bald, on the divide between the head waters of Slick Rock and Santeetla Creeks in North Carolina, and Citico Creek in Tennessee, then S. 70 W. 6 poles, then S. 60 W. 12 poles, S. 39 W. 16 poles, then S. 25 W. 18 poles, then S. 8 E. 14 poles, then S. 26 W. 10 poles, then S. 40 W. 20 poles, then S. 55 W. 12 poles, then S. 30 W. 10 poles, then S. 42 W. 60 poles, then
1063 S. 52 W. 26 poles then S. 25 W. 48 poles, then S. 30 W. 20 poles, then S. 45 W. 12 poles, then S. 22 W. 16 poles, then S. 37 W. 20 poles, to a stone marked "N. C. 11 M", same course S. 37 W. 20 poles, then S. 24 poles, then S. 30 W. 38 poles, then S. 60 W. 24 poles, then S. 87 W. 12 poles, then S. 44 W. 14 poles, then S. 25 W. 6 poles, then S. 2 W. 32 poles, then S. 73 W. 34 poles, then S. 82 W. 14 poles, then S. 66 W. 28 poles, then N. 66 W. 14 poles, then N. 85 W., 12 poles, then S. 71 W. 48 poles to a large rock marked "N. C. 12 M 1897", then S. 83 W. 13 poles, then S. 43 W. 14 poles, then S. 17 W. 18 poles, then S. 54 W. 20 poles, then S. 73 W. 52 poles, then S. 33 W. 35 poles, then S. 25 W. 14 poles, then S. 10 W. 21 poles, then S. 53 E. 20 poles, then S. 40 E. 50 poles, then S. 24 E. 20 poles, then S. 37 E. 16 poles to a rock marked "N. C. 13 M", then same course S. 37 E. 28 poles, then S. 41 W. 50 poles, then S. 10 E. 16 poles, then S. 45 W. 12 poles, then S. 52 poles, then S. 80 E. 18 poles, then S. 85 E. 24 poles, then S. 70 E. 10 poles, then S. 75 E. 36 poles, then S. 35 E. passing through the gap of the John Stratton Meadows at 11 poles, same course whole distance 29 poles, then S. 17 E. 30 poles, then S. 23 E., 15 poles, to a

stone marked on East side "N. C. 14 M" then S. 28 E. 30 poles, then S. 32 W. 10 poles, then S. 14 W. 27 poles, then S. 39 W. 22 poles, then S. 45 W. 16 poles, then S. 22 W. 42 poles, then S. 62 poles, then S. 17 W. 30 poles, then S. 24 W. 58 poles, then S. 30 E. 13 poles, to a stone marked on the East side, "N. C. 15 M", then same course S. 30 E. 10 poles, then S. 25 W. 64 poles, then S. 25 W., 64 poles, then S. 16 W. 34 poles, then S. 6 E. 26 poles, then S. 3 W. 10 poles, then S. 14 W. 20 poles, then S. 14 E. 32 poles, then S. 21 E. 12 poles, then S. 43 E. 20 poles, then S. 61 E. 16 poles, then S. 75 E. 46 poles, then E. 36 poles to a stone marked on the North side "N. C. 16 M.", then same course E. 16 poles, then S. 64 E. 44 poles to Haw Knob, then S. 4 W., 12 poles, then S. 25 E. 16 poles, then S. 5 W. 16 poles, then S. 7 E. 26 poles, then S. 38 E. 8 poles, then S. 52 E. 28 poles, then S. 43 E. 20 poles, then S. 25 E. 44 poles, then S. 63 E. 46 poles, then S. 35 W. 16 poles, then S. 25 W. 12 poles, then S. 40 W. 16 poles to a stone marked "N. C. 17 M.", then same course S. 40 W. 20 poles, then S. 17 W. 20 poles, then S. 4 poles, then S. 27 E. 18 poles, then S. 15 E. 8 poles to the top of Laurel Knob, then S. 30 W. 12 poles, then S. 40 W. 26 poles,
1064 then S. 45 W. 60 poles, then S. 67 W. 10 poles, then S. 50 W. 34 poles, then S. 60 W. 30 poles, then S. 50 W. 44 poles, then S. 65 W. 10 poles, then S. 50 W. 24 poles, to a stone marked "N. C. 18 M", then S. 60 W. 8 poles, then S. 73 W. 12 poles, then S. 83 W. 8 poles, then S. 50 W. 16 poles, then S. 18 W. 34 poles, then S. 28 W. 34 poles, then S. 36 W. 46 poles, then S. 12 poles, then S. 30 W. 36 poles, then S. 15 W. 22 poles, then S. 28 poles, then S. 35 W. 10 poles, then S. 45 W. 18 poles then S. 55 W. 34 poles, then S. 32 W. 12 poles to a stone marked "N. C. 19 M.", then S. 45 W. 54 poles, then S. 27 W. 14 poles, then S. 45 W. 14 poles, then S. 15 W. 16 poles, then S. 70 W. 16 poles, then W. 12 poles, then S. 65 W. 14 poles, then S. 71 W. 12 poles, then N. 80 W. 12 poles, then S. 53 W. 12 poles, then S. 32 W. 8 poles, then S. 22 W. 10 poles, then S. 43 W. 22 poles, then S. 27 W. 14 poles, then S. 23 E. 16 poles, then S. 26 W. 14 poles, then S. 55 W. 36 poles, then S. 45 W., 24 poles to a stone marked "N. C. 20 M", then same course S. 45 W. 6 poles, then S. 75 W. 8 poles, then N. 80 W. 12 poles, then S. 62 W. 22 poles, then S. 45 W. 16 poles, then S. 78 W. 16 poles, then N. 72 W. 12 poles, then S. 68 W. 30 poles, then S. 86 W. 14 poles, then S. 81 W. 16 poles, then S. 74 W. 16 poles, then S. 60 W. 34 poles, then S. 45 W. 12 poles, then S. 60 W. 34 poles, then S. 73 W. 16 poles, then S. 65 W. 20 poles, then S. 77 W. 8 poles, then S. 57 W. 14 poles, then S. 83 W. 14 poles to a rock marked on the South side "N. C. 21 M.", then S. 65 W. 12 poles, then S. 35 W. 10 poles, then S. 87 W. 12 poles, then N. 72 W. 12 poles, then S. 70 W. 18 poles, then W. 8 poles, then S. 55 W. 16 poles, then S. 67 W. 10 poles, then S. 42 W. 12 poles, then S. 77 W. 26 poles, then S. 64 W. 14 poles, then S. 60 W. 28 poles then S. 50 W. crossing Tellico River at 12 poles, whole distance 16 poles, then S. 30 W. 12 poles, then S. 40 W. 8 poles, then S. 32 W. 8 poles, then S. 48 W. 8 poles, to a large holly tree with an old mark "86 M", on it, then S. 37 W. 26 poles, then S. 16 W. 8 poles, then S. 30 E. 28 poles, then S. 15 E.

20 poles, then S. 45 W. 8 poles marked "N. C. 22 M" same course S. 45 W. 14 poles, then S. 84 W. 16 poles, then S. 60 W. 10 poles, then S. 8 W. 12 poles, then S. 25 W. 12 poles, then S. 40 W. 15 poles, then S. 64 W. 10 poles, then S. 53 W. 20 poles, then S. 6 W. 18 poles, then S. 75 W. 34 poles, then S. 24 W. 20 poles, then W. 11 poles, then S. 78 W. 27 poles, then S. 40 W. 10 poles, then S. 29 W. 10 poles, then S. 46 W. 14 poles, then S. 68 W. 14
1065 poles, then W. 10 poles, then S. 68 W. 24 poles, then W. 10 poles to a rock marked "N. C. 23 M", then same course W. 12 poles then S. 53 W. 20 poles, then S. 65 W. 17 poles, then N. 63 W. 49 poles, then S. 72 W. 8 poles, then S. 84 W. 24 poles, then N. 57 W. 12 poles, then N. 42 W. 34 poles, then N. 65 W. 28 poles, then N. 45 W. 20 poles, then N. 60 W. 12 poles, then S. 70 W. 14 poles, then S. 50 W. 42 poles, then S. 73 W. 14 poles, then N. 67 W. 14 poles to a stone marked "N. C. 24 M.", then S. 57 W. 56 poles, then N. 82 W. 18 poles, then N. 43 W. 24 poles, then N. 30 W. 44 poles, then S. 42 W. 22 poles, then N. 60 W. 38 poles, then S. 52 W. 26 poles, then S. 25 W. 30 poles, then S. 70 W. 32 poles, then S. 85 W. 40 poles to a stone marked "N. C. 25 M. 1897", on the top of the Tennessee or Beaver Dam Bald, whole distance from beginning point at Tennessee River, twenty-five miles, one hundred and eleven poles.

This May 19th, 1897.

H. P. HYDE,
Co. Sur. Graham Co., N. C.
F. M. LOVINGOOD,
Co. Sur. Cherokee Co., N. C.

O. P. WILLIAMS,
H. M. LOVINGOOD, *C. C.*

STATE OF NORTH CAROLINA,
Office of Secretary of State:

RALEIGH, *April* 28, 1911.

I, J. Bryan Grimes, Secretary of State of the State of North Carolina, do hereby certify the foregoing and attached Seven (7) sheets to be a true copy from the records of this office.

In witness whereof, I have hereunto set my hand and affixed my official seal. Done in office at Raleigh, this 28 day of April in the year of our Lord 1911.

[Seal State of North Carolina, Department of State.]

J. BRYAN GRIMES,
Secretary of State.

(Endorsed:) Exhibit 1, G. A. T. May 1, 1911.

1066 Here follows map Exhibit 2, G. A. T. Also Exhibit 3, Resolution No. 50. (Already copied.)

1067 Supreme Court of the United States.

NORTH CAROLINA
vs.
TENNESSEE.

Evidence of R. D. Burns and C. L. Slagle.

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Supreme Court of the United States.

STATE OF NORTH CAROLINA
vs.
STATE OF TENNESSEE.

On this the 3rd day of November, 1911, in the Court Room of the Circuit Court of the United States for the Western District of North Carolina, at Asheville, the examination of witnesses on behalf of the State of North Carolina was resumed, in pursuance to the agreement made between the Attorneys General of North Carolina and Tennessee, before W. S. Hyams, Clerk of the said Circuit Court, who by consent of the parties acts as Commissioner in this behalf; when and where the State of North Carolina was represented by T. W. Bickett, Esq., Attorney General of North Carolina, and Messrs. Theodore F. Davidson and F. A. Sondley; and the State of Tennessee was represented by Charles T. Cates, Esq., Attorney General of the State of Tennessee and T. E. H. McCroskey.

The State of North Carolina re-introduced D. B. Burns, who has been heretofore sworn and examined as a witness in this cause, and he was further examined as follows:

Mr. SONDLEY:

Q. You are the same witness by the name of Burns who has been heretofore examined as a civil engineer in this cause?

A. I am.

1068 Q. Were you present at the last hearing of testimony had in this cause—held in Knoxville, Tennessee?

A. I was.

Q. Have you since that time been in the vicinity of the land in dispute?

A. Yes sir.

Q. When.

A. About the middle to the last of September; this past September.

Q. Did you have with you on that occasion a copy of the Davenport field notes?

A. I did.

Q. Did you make any investigation in regard to the matters in dispute here so far as those notes might bear upon them, on this trip?

A. Yes sir.

Q. Where did you begin and who was with you, and at what time as nearly as you can remember?

A. I think it was on the 20th of September—this past September. Mr. Charles W. Slagle I think and my brother, C. H. Burns, were with me, and I went to the Smoky Mountain side about five miles north of the Tennessee Rover to a place designated in the field notes as the 60th mile, in a deep gap on the trail from Equeneetly to Tellasee.

Q. At whose instance did you go there on this occasion?

A. Mr. Bickett, the Attorney General for North Carolina.

Q. Well, starting now where you began at the 60th mile tree as called for, did you find the tree there?

A. No sir. At that gap, which is known as Dalton Gap there now, there's been a clearing and there's no timber that stands right in the gap at all now at present; but there is an old trail that passes through that gap, and I followed that trail from what is now known as Toll Gate on the old Smoky Mountain pike, for a distance of about a mile and a half or two miles, and I had with me a copy of Mr. Gannet's field notes, where he had surveyed from the 59th mile tree, a point that is not in dispute, and I found that the distance according to his survey takes me to this deep gap, within one mile of the 59th mile tree, and I commenced at that point, following the line through to Jenks Knob.

Q. Starting then at where you speak of, the 60th mile tree, was not that in the state line as recognized?

A. Yes sir.

Q. From this point you treat as the 60th mile tree, where did you go with Mr. Slagle and your brother?

A. Mr. Slagle was with me to what is called the junction, at the end of the Stratton Bald, and my brother and I went on to the Jenks Knob.

Q. What was the first point you reached after leaving the 60th mile tree-point that you examined?

1069 A. Well, I investigated at the end of every mile practically to see if I could not find the original mile trees, or some trees of them.

Q. What did you find at the point where the 61st mile tree had stood?

A. There's nothing there now. Couldn't find any trace of the original tree, and I could not find any of the original mile trees.

Q. Did you find any state line marks?

A. Yes sir. There is a well marked line all the way down to the Tennessee River.

Q. From where?

A. From where I started at the 60th mile.

Q. Well sir, then coming to the 62nd mile. Did you discover anything there of interest?

A. No sir.

Q. Going on then to the 63rd mile. Did you find any tree there?

A. No sir.

Q. Then in the call for the 64th mile, I find to be a large white oak. Did you find that or not?

A. No sir. We never found the original white oak at that particular point called for in the field notes as the 64th mile. I established the point by taking the distance from the 59th mile tree, according to Mr. Gannet's and my survey.

Q. Was that point you established on the marked line or not?

A. Yes sir, from that point and about two or three hundred feet on the further side of that point, the gorge at the mouth of the Slick Rock Creek is plainly visible, and at that point the field notes called for a straight mile bearing south, 75, west 324, to a large white pine at the mouth of a large creek.

Q. Now, when you found this space where the 64th mile tree should be, in which space you could see the mouth of the Slick Rock Creek, did you find that to extend beyond the distance given?

A. You mean the distance where we could see the creek?

A. Yes sir.

A. You could see it for two or three hundred feet beyond.

Q. Beyond what?

A. Beyond the point where the 64th mile tree should be as measured from the 59th mile tree.

Q. Could you see it any further than that distance?

A. You could see it from that distance.

Q. And you could see it for two or three hundred feet beyond that distance I mean?

A. Yes sir. To the Tennessee River, and also two or three hundred feet back of that distance.

Q. Well, was that the only place you could see it, or were there other places besides what you have mentioned?

1070 A. Well that was the only place in the neighborhood of the 64th mile tree that we could see it. From the space back of the Smoky Mountain, a half a mile or a mile, you could see it.

Q. Now I see from these notes of Davenport that the next call after the 64th mile, is south 75, west 320, across the Tennessee River to a large white pine the south side of the river at the mouth of a large creek. Did you go there?

A. Yes sir.

Q. What did you find there?

A. We found a large white pine about 36 inches in diameter. The pine is down now. Had been dead for several years—it has the appearance of having been dead for several years.

Q. What side of the river was it on?

A. It is on the south side of the river, and it is about twenty or

twenty-five feet from the water's edge, both of the Tennessee River and Slick Rock Creek. I examined the tree carefully for marks, but the bark was shed off of it considerably, and we couldn't determine anything satisfactory in regard to marks, but there is one old mark on the side facing the Slick Rock Creek, but the mark never went to the wood, and there was no way of determining whether or not it was the original state line mark.

Q. Did you see the stump of that tree?

A. The tree has been blown up by the roots, and the whole tree lies right down the Tennessee River. The whole tree is there yet.

Q. How could you tell where it had stood?

A. Well you could see where it has been buried, the whole way it lay.

Q. Now, from that point the next call of the notes would be up the creek, ending in a call of due west 60 to a spruce pine, the 66th mile. What did you find at the end of the mile, up the creek from its mouth?

A. We found a spruce pine tree, or what is commonly called a hemlock. All the old surveys speak of the hemlock as being spruce pine. About one mile from the mouth of the creek from the large white pine we have spoken of, we found a hemlock or spruce pine tree, and that tree had been blocked by me on my first survey, something over two years or possibly three years ago. I testified in regard to the tree being blocked, but I never knew that it was the original mile tree, but as it falls in the right distance, and
1071 had the original state line marks on it, there is no doubt in my mind but what it is the 66th mile tree.

Q. I find the next, the 67th mile call is to a birch, at the Cheoyee Path. Did you go to that point?

A. Yes sir.

Q. What did you find there?

A. The distance from the mouth of the creek to the Cheoyee Path is two miles, possibly a few feet short of it, and at the place where the trail crosses the creek, I found a birch tree, and it had some hack that looked like it had been put on with an edge tool of some kind, represented almost the letter "N", and it had what looked to be a blaze on the west side of the tree.

Q. How did these marks compare in relation to age?

A. Well, they looked to be very old. There was no way of determining the age, because I do not think any of the cutting went to the wood, and I did not block it because I felt sure that it would be useless.

Q. What indications, if any, did you see of an old path or trail at that place?

A. Well, there is a trail that goes there now that comes from the Slick Rock Gap, and across the Slick Rock Creek at this birch tree that I spoke of, and then goes up Little Slick Rock Creek and straight to the Tennessee Country, and the people that have lived in the country tell me that there is an old Indian trail that has been through there ever since they have known anything about the country.

Q. Did you go backwards on that trail in the direction from Tennessee?

A. Well the trail that I speak of is known now as the old Belding Trail, some eight or ten miles.

Q. Did it ever reach the Cheoyee River country?

A. Yes sir.

Q. What place?

A. Near Johnson.

Q. The next or 68th mile as called for in the notes is to end at a sycamore. Did you measure a mile from this birch tree that you talk of at Cheoyee Path?

A. Yes sir. I didn't do any measuring this last trip. I took the measuring that I used when I made my first survey, and the distance called for for the 68th mile. I found a number of large sycamore trees, one extremely large one that falls within a short distance of the end of the mile.

Q. About how far?

A. Oh, I think less than a hundred feet. And this par-
1072 ticular sycamore tree stands on what you might term a small island in the creek.

Q. What creek?

A. Slick Rock Creek, and as sycamore timber sheds its bark every two years, possibly every year as I know of, and there are no marks to be seen on it, and just three or four hundred feet above this sycamore that I de-ignate as being a large one, there are some three or four others standing within a hundred and a hundred and fifty feet of each other, any one of them might have been marked as a mile tree, but of course we could not find any marks on any one of them, but in going up to this place in which the sycamoreis called for I think I only saw two sycamore trees, and they were somewhat alike, anywhere between the 67th and the 68th mile, and just at the end I found the clump of sycamore trees.

Q. Now I find the end of the next mile as called, has a maple on the east bank of said creek, the 69th mile. What do you know of that, if anything?

A. Well, I searched the place called for a maple, and I found one maple about twenty-four inches in diameter that stood on the east bank of the creek, and it was the only maple that stood anywheres near on the east bank of the creek, with the exception of two small ones, one about ten and the other about twenty or twenty-five feet from the one I speak of, and they are both very small and possibly did not exist at that day and time.

Q. What was about the age of the one you found on the east bank of the creek?

A. Well, it has stood there for years and years. It is old enough to have been a state line tree.

Q. Marked in 1821 you mean?

A. Yes sir. It's old enough to have been marked in 1821.

Q. Now the next mile, at the end of the call, I find a birch on the west bank of said creek, the 70th mile. Did you make any investigation at the end of the 70th mile point?

A. Yes Sir.

Q. What did you find?

A. That point falls very closely to where North Carolina claims that the line leaves the Slick Rock Creek, and I found right on the bank of the creek, at the mouth of what is called the Big Stack Branch, which is the beginning of the lead that leads up to the Big Fodder Stack, along the North Carolina contention—at this
1073 point I found a large stooping birch that has three old marks on the side facing the line as claimed by North Carolina. It has also been recently marked and there is no doubt in my mind but what that is the original 70th mile tree.

Q. On which side of the creek is it?

A. It is on the west bank of the creek.

Q. What was the appearance of these marks you speak of as to age?

A. They had the same appearance of all the marks found in both the disputed and undisputed sections of the state line. They were evidently the original marks made by the commissioners in 1821.

Q. Did you compare that tree in any way with the spruce pine that has been spoken of on that ridge leading up to Big Fodder Stack as a fore and aft tree?

A. Well, only in regard to the edge of the marks. They looked all to have been made at the same time.

Q. How about the course of the line that you marked that spruce pine a fore and aft, would it tally with the birch or not?

A. The spruce pine that you speak of is the one that I blocked?

Q. Yes sir.

A. The course given in the field notes and the birch that I found after that fore and aft spruce pine that you speak of shows a variation of two and a half to three degrees, which would have been sufficiently close to the bearing given in the field notes.

Q. Did you pursue that investigation up that ridge to Big Fodder Stack further than you did before to any extent, and if so what?

A. Yes sir. I searched that ridge carefully again, and I still found old marks leading up to the ridge. I do not think I found any new ones, except this birch that I spoke about, which I think is the 70th mile.

Q. Now which of the trees that you have spoken of as found from the mouth of Slick Rock Creek up to and including this birch had you not found before?

A. Well, as I say, the birch is the really only tree that I did not find before.

Q. Coming then to the top of the ridge at Big Fodder Stack, what course did you pursue from that on in your investigation?

A. I made a search for the 72nd mile, which is a white oak as called for in the Davenport notes.

Q. Is that the white oak that is called for as on the ridge
1074 where the line crosses?

A. Yes sir, that is the white oak that I spoke about.

Q. What then did you find there of any interest?

A. I found two right large white oaks, either one of which could have been a mile tree, but they had both been marked as of more recent date, and they have also been hacked evidently by persons

walking along the top of the mountain, and it is impossible to tell whether they had any old marks on them or not. I couldn't see anything on either one I was satisfied was the original state line marks. But the two trees there are right for the distance. They are on the divide between Slick Rock Creek and Citico Creek.

Q. What did you then do next that would throw any light upon this controversy that has not been heretofore testified to by you?

A. Well, all the way I tried to test the bearings given in the Field Notes to see whether or not they would lead me in a general way along the ridge, and I found that they did. I also found at the end of most of the miles the bearings would fit very close, as close as you would expect of a survey that was made at that day and time, and I looked at the end of the 75th mile which is spoken of in the Field Notes as a beech, Main Mountain, that takes us to the Junction of the Hangover Mountain with the Fodder Stack, commonly known as Junction in this case, and we found there that beech timber is the prevailing timber in that section, and there is one old land corner there that is made by J. W. C. Pearcy somewhere in the early 50ties, I do not remember the exact date, but we couldn't find the original mile tree; that is, I followed the undisputed line from that point to the next point called for in the Field Notes as the 76th mile.

Q. Before leaving the 75th mile, you stated that you found a beech neighborhood. How long before you reached the end of the distance did you find beeches, and how long after you left that distance did you find beeches? You didn't find any beech timber of any note until you got along close to the end of the mile—that is, close to the junction? and how long after passing the junction before you left the beech neighborhood?

A. Well, pretty soon after leaving, I don't remember just the distance. The beech timber grows back from this junction
1075 towards the Stratton Bald. Of course there's some beech timber follows along the undisputed line in the direction in which I went. Just how far it lasts, I really do not know.

Q. You spoke of the 76th mile, which I find the Davenport Notes calls for a Spanish Oak, a low gap. What did you find there?

A. At the distance of one mile from the junction I found a deep gap, and there was two large mountain oaks, what is known as mountain oaks in this day and time. They very closely resembled Spanish oaks, and no doubt were called Spanish oaks, by the Commissioners. One of them looked like it had some old places. I took a block out of it, but when I got into the tree, the interior of the tree was decayed, and I could not get back far enough to have gotten the marks if it had been marked by the Commissioners.

Q. Please pursue your investigation from that point.

A. Well, I searched at the end of every mile for the mile tree called for in the Davenport Notes.

Q. Did you find any of them as you went along as called for?

A. None.

Q. The call for the 77th mile is a red oak?

A. At the end of that mile we found that these mountain oaks are a prevalent timber. We did not find the original tree, although we found an old mark line leading all the way along the ridge.

Q. Of what apparent age?

A. With the original marks of 1821.

Q. There is a call for a maple at the end of the 78th mile. Was there anything your investigation disclosed with regard to that?

A. Yes sir. We found a maple at the end of that mile according to the courses given in the notes.

Q. The one preceding the maple, (or the one leading to it) or the one leading away from it?

A. The maple that I spoke of? Well, no sir, the description is all right, but it is like almost all maples, the bark has been shed off from time to time and we couldn't see any marks at all upon it. It is right for distance and it is right for the bearings given in the Field Notes, but we couldn't determine any marks upon it.

Q. The next call is a beech, 79th mile, did you find that?

A. No sir, only that it falls in a beech country.

Q. The 80th mile calls for a beech. What there?

A. Well, that also falls in a beech country, but we couldn't find the original trees. These are very high up on this mountain
1076 and the timber that grows up there is very low and scrubby, and I do not think they would show marks made at that time.

Q. The next, the 81st mile, says a red oak. Anything disclosed by your last investigation there that you did not testify about before?

A. No sir. I did not find anything there that led me to believe that I had found the right tree. I found the old mark line all along the ridge, but the trees designated at the end of the mile I did not find at that particular point.

Q. The next call, the 82nd mile, is the beech. Did you discover anything there?

A. There was a small beech that was pretty close to the end of that mile. It was one of those scrubby fellows, and I saw nothing on it.

Q. The 83rd mile is at a red oak according to the Notes. Anything discovered there?

A. Yes sir. There was a tree there that resembles a red oak, but it was what I would call a mountain oak. That had the original marks on it.

Q. What marks?

A. The state line marks of 1821.

Q. Now the 84th mile is a locust. Anything found there that was new?

A. No sir. Only that there were several locusts standing around at the end of that mile, but there wasn't any of them that showed any marks.

Q. How about their ages?

A. Well, I don't believe they were old enough to show any original marks. They were not very large trees.

Q. The 85th mile is a chestnut oak according to the Notes?

A. I found, I think, two chestnut oaks at the end of that mile. I couldn't see any marks on them.

Q. The 86th mile is a holly tree near the head of the Middle Fork

of Tellico River. I believe you have testified in regard to that tree before. Did you discover anything new about it on this investigation that you are now testifying to, in regard to it?

A. No sir. I did not discover anything new any more than the course of distance given in the Field Notes, or rather the course given in the Field Notes from a point one mile from the 86th mile was what would be the 87th mile. The bearings taken there upon the ground tally with the call given in the Field Notes. I think the variation is just 5 degrees.

Q. The 87th mile calls for a red oak. What did you find there if anything?

A. I did not find that, and I found very few marks be-
1077 yond the 86th mile tree. The fact of the matter is, I did not see any marks that I was sure were state line marks.

Q. And the 88th mile calls for a red oak. Anything there?

A. I didn't go to the 88th mile this trip. That ridge from Jenks Knob on towards the Hiawasee River, I suppose seventy-five per cent of it is open, no timber grows on it at all.

Q. The next call, the 89th mile, is a hickory at the head of Beaverdam Creek. Did you go near enough to that mile to discover whether or not you could see the head of Beaverdam Creek from anywhere in its neighborhood?

A. Yes. You could see the head of Beaverdam Creek from the ridge between Jenks Knob and Beaverdam *Blad*, dividing the waters of Beaverdam Creek and Tellacoa River.

Q. Does the head of Beaverdam Creek run out from Beaverdam Bald or its immediate vicinity?

A. Yes sir. There is a turn of the main prongs of Beaverdam Creek that heads up under the Beaverdam Bald.

Q. Could you see that creek you have last spoken of or called the Beaver Dam Creek from the ridge along that part of the country?

A. Yes sir.

Q. Could you see it from that portion of the ridge that you would traverse in following the North Carolina contention?

A. Yes, sir, you could see it from there.

Q. Now, you have testified in regard to, I believe, following with the copy of the Davenport Field Notes from the Tennessee River up to Junction, along the line contended for by North Carolina. Did you make any experiment by attempting to follow with the Davenport Field Notes or a copy of them, the line as contended for by the State of Tennessee from the Tennessee River up by Hangover?

A. Yes sir.

Q. Please start with the river and tell us what you did and found about that.

A. I followed the Tennessee contention, then I followed the North Carolina contention, looking at the end of each mile and seeing whether or not I could find the trees called for in the Davenport Field Notes.

Q. Did you find any creek from the Tennessee River going up the Tennessee contention over Hangover?

A. No sir. The 64th mile tree is the last one that is not in dis-

pute. The 65th mile would be in the disputed territory. I
1078 looked at the end of the 65th mile,—I am basing all my measurements now from the 59th mile tree—and establishing the 65th mile tree according to the Tennessee contention. I looked for a white pine. The distance takes me something like a half mile from the Tennessee River, and I did not find any white pine timber along the ridge at all.

Q. Where were you at the end of that mile—what sort of a country as to elevation?

A. Well, it was something like seven or eight hundred feet in elevation above the Tennessee River I suppose.

Q. And there was no white pine timber along the ridge at all?

A. I saw one white pine tree. That stood down off the ridge, possibly about forty or fifty feet in elevation from the foot of the ridge seventy-five or a hundred feet in distance. That was dead, and that was the only white pine tree I saw anywhere in the neighborhood, but it was not on the Tennessee contention—stood down off the ridge.

Q. The call for the 66th mile of the Davenport Field Notes is a spruce pine. Did you examine near the 66th mile up on the Tennessee contention?

A. Yes sir.

Q. Find any spruce pine there?

A. No sir. No spruce pine anywhere near there.

Q. The 67th mile, according to the Davenport Field Notes was at the birch at Cheoyee Path. Did you try to apply that to the Tennessee contention, and what was the result?

A. There was no birch near it.

Q. How about the Cheoyee Path?

A. Well the Cheoyee Path passes from what is called Slick Rock Gap.

Q. How far from the end of the 67th mile did you find it, according to the Tennessee contention?

A. Well, I suppose about three fourths of a mile—one half mile at any rate.

Q. Was that 67th mile ending near a creek?

A. No sir. No creek near there sir, nearer than Slick Rock.

Q. Was the 66th mile end near a creek?

A. No sir.

Q. The call for the 68th mile is a sycamore. Did the 68th mile on the Tennessee contention bring you to any sycamore or sycamore neighborhood?

A. No sir. That takes you to what is near what is now called the Big Fat Gap.

Q. There is no sycamore along there at all?

A. Didn't see a sycamore anywhere along the Tennessee contention.

Q. Any stump there?

A. No sir.

Q. The 69th mile says in the Davenport Notes a maple on the east bank of said creek. What did you find at the 69th mile of the Tennessee contention?

1079 A. I found one maple that is a little short of the 69th mile that stood along the Tennessee contention, but I did not find any creek, and I did not find any marks upon the maple.

Q. What size of tree was it?

A. It was about twenty inches in diameter.

Q. How far was it from the end of the distance?

A. Something like two hundred feet.

Q. Any creek there?

A. No sir.

Q. The 70th mile according to the Davenport Field Notes would be a birch on the west bank of said creek. Any creek there on the Tennessee contention?

A. No sir.

Q. What did you find at the end of that 70th mile running along the Tennessee contention.

A. I didn't find anything but a large bed of ivey. There is no timber there at all near to the Hangover.

Q. Find any birch there?

A. No sir. There's no timber there at all.

Q. Any sign of a birch having been there?

A. No sir, not at that particular place. There's birch timber that grows in that neighborhood after you go out of this ivey bed, but there is none that grows on this particular place.

Q. Did you find any birch tree anywhere that could fit that call approximately on the Tennessee contention?

A. No sir.

Q. Now, the next call for the 71st mile is a pine. Did you find anything about that in following the Tennessee contention? Find any Pine there?

A. No sir. I did not find any pine from the Hangover to the Junction. I did not go over this last trip.

Q. And this pine according to the Tennessee contention would have to be between Hangover and the Junction?

A. Yes. I have been along the ridge a number of times, and I do not recall any pine there.

Q. Taking the Tallecoa country, did you endeavor to see how the Davenport notes would accord with the Tennessee contention in the disputed territory on Tallacoa River?

A. I did not make any investigation in this field this time with regard to looking for the mile trees at the ends of the miles in the Tallecoa country. The distance is entirely too long, and of course an investigation of the surveys alone is sufficient to determine that they never went around the head of Tallecoa River.

Q. Now Mr. Burns, in attempting to see where these Davenport Notes would lead you upon the ground, was the effect to con-

1080 firm or otherwise, your previous impression in regard to the line that they speak of being the recent contention?

A. It confirmed it.

Q. Would it be possib-e or not, for a man to have made these Davenport Notes who had not been along the survey of the North Carolina contention?

A. No sir. It would not be possible.

Q. How nearly do these Davenport Field notes correspond with a survey of the North Carolina contention in the disputed territory?

A. Well, I find that they conform as close to the contention of North Carolina as any old surveys, or most any old surveys do, when you go to retrace them at this day and time. Of course there are some errors in the Field Notes, but there is enough given in the Field Notes to enable any competent surveyor or engineer to follow beyond the shadow of any doubt where they ran and mark the state line, and that takes you along the North Carolina Contention, takes you clear away from the Tennessee contention, does not support in any way shape or form the contention claimed by Tennessee.

Q. You heard, I believe, the testimony of Mr. Williams and Mr. Hale you said at the last hearing at Knoxville in this cause, didn't you now?

A. Yes sir.

Q. You I believe heard Mr. Williams and maybe Mr. Hale testify that they located their line, that they had marked upon a copy of your map, by the course and distances of the Davenport Field Notes? Taking everything else into consideration, how fair a test would it be of any old field notes to locate by course and distance land, disregarding all other bearings to the calls of them?

A. It would be no test at all.

Mr. CATES: The State of Tennessee objects both to the question and answer, because in so far as the matter called for may be relative to it, it is a question for the Court to determine, and not this particular witness.

Mr. SONDLEY: If you were sent out to make a survey with a book of notes made in 1821, would you expect to be able to find the true lines, should you discard everything else except course and distance in them?

A. No sir. I would expect the course and distance to lead me close enough to enable me to follow the marks that they left, and I would not expect anything more from them than that.

Q. What would be the effect of any error that might occur in the course and distance if all other calls were discarded on
1081 subsequent bears of the line? Suppose you should survey a course and distance again and it should turn out that there was some error in either the course or distance, and you should make the end of that the beginning of the next call, and use only course and distance, and keep on in that way afterwards, discarding everything else but course and distance, what would be the effect upon the line from the time you made your first departure because of an error?

A. I would carry that error all the way through.

Q. But suppose you take a line in which there is a slight mistake in course and distance, but a natural object is called for at the end of it, and you go to the natural object, would that correct the

error as to the remainder of the survey or would it perpetuate the error?

A. It would correct it.

Q. Is it anything unusual in old surveys to find some mistakes as to bears and distance.

A. No sir, you find a great number of mistakes.

Q. Would you expect, if you should take a survey of 1821 and the field notes, that you could run it correctly if you followed only course and distance?

A. No sir.

Q. You couldn't hope to run it correctly but by taking the course along with the natural objects?

A. It is a very easy matter to run the state line from the Davenport Field Notes.

Q. Have these Davenport Field Notes aided you any in finding anything that you had been unable by your previous survey to find?

A. Yes sir.

Q. What?

A. They enabled me to locate the 70th mile tree and also the 66th mile tree, and know about the 65th mile tree, because I believe the large white pine that I found at the mouth of the Slick Rock Creek was the original tree.

Q. The survey then would be on what contention?

A. The North Carolina contention.

Q. Would they enable you to find anything according to the Tennessee contention in the disputed territory?

A. No sir.

Cross-examination by Mr. CATES, Attorney General for the State of Tennessee:

Mr. CATES: Mr. Burns I believe this is the second time you have been examined since the finding of the so called Davenport Field Notes, is it not?

A. Yes sir. I believe it is.

Q. When you were examined last May, you had then had
1082 in your possession a copy of the Davenport Field Notes for some months, had you not?

A. Yes sir. I had had it for sometime. I do not remember how long.

Q. How many times have you been on the ground since you were furnished a copy of the so-called Davenport Field Notes?

A. I have been on a portion of the ground twice since then.

Q. You had been on the ground before you were examined in May, had you not?

A. No sir. Not after I had had the Field Notes.

Q. Then you have been on the ground twice since May?

A. Yes sir. I only made one trip with the express purpose of going over it with the Field Notes, and then I was called back into that country to make some land surveys, and I visited a part of the State line on that trip.

Q. When was this?
A. Last week.
Q. Now I believe you say that you, your brother and Slagle went down into this disputed territory some time in September?
A. Yes sir.
Q. About what date in September did you go there?
A. My recollection is it was on the 20th that we reached the state line on the Smoky Mountain side where it is in dispute.
Q. How long were you down there?
A. Well, we were on the ground about a week, more or less.
Q. Well, how much less? You have your notes, that will indicate.
A. I reached the State line on the 20th, and on the 27th I left. On the 26th I left the state line.
Q. On the 26th? Where were you on the 26th of September when you left it?
A. I looked over the portion of the line from about three miles from about the 83rd mile to the Jenks Knob.
Q. Now all of these six days you say you put in looking over the line?
A. Yes sir. Of course some of it was spent in going from boarding places to the line, but I spent all that time in investigating the line. I left the line about noon on the 26th.
Q. Now where did you board on the 20th?
A. At the Toll Gate.
Q. With whom?
A. With Davis.
Q. What Davis?
A. Charles Davis I think was his name.
Q. How close is the toll gate to the undisputed state line on that side of the river?
A. It's about two miles to the 60th mile tree, a little more or less and it is about three miles along the road to where the road crosses the Smoky Mountains.
Q. Now you said two miles to the 60th mile tree. Did you mean to south of that there is a 60th mile tree standing Mr. Burns?
1083 A. No sir. I mean it is where the trail crosses the state line.
Q. Do you mean where a trail crosses?
A. Yes, sir.
Q. Do you mean to say that is the trail called for in the Davenport Notes?
A. Well, of course all a person would know about that, not living at that day and time, would be on tradition.
Q. Don't you know that as a matter of fact that tradition is that the Tellasee Path was where the Pike road crossed the state line?
A. No sir.
Q. Haven't you already testified to that effect in this case?
A. I never testified that. I might have testified that I thought it was through there, but I never testified that I was certain, because I did not know.

Q. You do not know because you are not ninety years old, but haven't you already testified in this case that according to tradition that the Tellassee Path was where the pike road now is?

A. I do not have any recollection of testifying it, because I did not know, and I do not know only from tradition now, but there is an old trail that goes there, then over the gap. I know that certainly because I have been over it.

Q. Mr. Burns, if that path that crosses the state line and is known as the Equeneetly Path, Cades Cove crosses at the 54th mile, the Tellasee path crosses at the 61st mile don't it according to the Field Notes it says hickory 60th mile in a low gap at the path from Equeneetly to Tellasee.

Q. I am not asking you about the Field Notes, but I am asking you as a matter of fact, if the path from Equeneetly into Cades Cove crosses at the 54th mile, then the place where the other path crosses is at the 61st mile?

A. It is not so stated in the Notes.

Q. So you're confining your observations to the notes? All right. Now let's go back. Where did you board on the 21st day of September?

A. I went back to the same boarding place at Davis'.

Q. You crossed the river on the 21st did you?

A. On the 21st I walked down the Smoky Mountains some two or three miles and then on the 20th, yes, on the 21st I went to Dave Orr's.

Q. Where is Dave Orr's? That's over on the east side of Hangover?

A. Yes sir.

Q. That's on Bear Creek?

A. Well, it's between Hangover and Cheoyee River. It is on the waters of Bear Creek.

Q. Then you came across from Dave Orr's into the Slick Rock valley, did you?

1084 A. Yes sir. On the 21st I went up as far as the old trail on Slick Rock Creek that goes through Slick Rock Gap, and at evening I took the trail right through the gap and came to Dave Orr's, about four miles.

Q. Where did you board on the 22nd?

A. I went to Mrs. Crowder's.

Q. Where's that?

A. It's about a mile and a half between the Big and Little Fodder Stack.

Q. Now is that where you saw Mr. D. G. Mangess, a surveyor?

A. I was introduced to them, but I have forgotten their names There were two strangers there to me. I think they said they were surveyors.

Q. Well you hadn't been doing any surveying that day, had you?

A. Well, I went over part of the line from the old trail where it crosses the creek up to the Big Fodder Stack that day.

Q. You didn't tell them you had not been doing any surveying did you?

Q. Yes?

A. Well I do, not think that I had when I went over this trip this time. I did not do any chaining, except possibly tying in a few trees now and then, and using the chain that I had on the first survey that I made.

Q. And this was just an investigation to look at the ends of the miles, and to test bearings, etc.? Now is it not a fact that you told D. G. Mangess, or one of those men you saw at Crowders, between the Big and Little Fodder Stack, that the commissioners were instructed to run that line over Hangover?

A. No sir. I never made no such a statement.

Q. Didn't you state that the instructions whi*ch* the commissioners had to run the State line would have carried it over Hangover?

A. No sir.

Q. How far did you travel that day? about ten miles didn't you?

A. I expect it was more than ten miles.

Q. What time did you get to Mrs. Crowder's?

A. J-st about dark. I couldn't hardly see the trails.

Q. Well where did you stay the next day?

A. I *staid* down on the Santeetlah, at D. A. Stewart's.

Q. That's down off the mountain on the North Carolina side?

A. Yes sir.

Q. *The* how far from the State line?

A. Something like four miles.

Q. Well, where did you stay on the 24th?

1085 A. I think that was on Sunday. I *staid* at Doc Stewart's over Sunday.

Q. So you didn't work on Sunday?

A. No sir. I went from there to Jasper Fain's.

Q. Where's Jasper Fain's?

A. He lives something like a mile from Laurel Top on the North Carolina side.

Q. In the disputed territory?

A. On the North Carolina side as claimed by Tennessee.

Q. Between the state ridge and the dividing ridge?

A. Yes sir.

Q. He lives in there on the head waters of the middle fork of Tallecoa, don't he?

A. Yes sir.

Q. Some little distance west from the head waters is it not?

A. Well his house stands—he's got two cabins—there.

Q. They stand then just a few hundred feet from the state ridge?

A. It is on the head waters of the Tallecoa River.

Q. Well that was on the 25th you *staid* with Fain?

A. Yes sir. It was on Monday night. I think that was the 25th.

Q. And on the 26th about noon you left the work?

A. Yes sir.

Q. Now you didn't go as far as you claimed the 89th mile tree to be, did you?

A. I didn't go to the 89th mile tree this trip. No sir.

Q. Those Davenport Notes I believe you said called for a hickory at the 89th mile? Is that right?

A. Hickory, 89th mile.

Q. Now did you ever see a hickory where North Carolina claims the 89th mile should end, bearing any kind of marks?

A. No sir. I never made any investigation for mile trees from the Jenks Knob.

Q. Well so that we can clear up matters—I believe you stated on direct examin*ta*ion this morning that you did not see any marks beyond that holly tree claimed to be the 86th mile tree, which you were sure were state line marks.

A. Yes sir. I had in mind this last trip when I made that answer. If I found any at all on my previous search there, they were very few. I do not think I found any. I am not sure.

Q. How far beyond this holly tree did you go on this trip?

A. About a mile, possibly a little over a mile to Jenks Knob.

Q. Went up the ridge to the main ridge?

A. Yes sir, and I did not find any marked trees at all.

Q. Well on the main ridge, marked trees?

1086 A. Well that's what we are talkin- about.

Q. So you were down there in that country about six days and a half, which included Sunday when you didn't work, leaving about five days and a half that you were occupied in going over this line, and in going to and from your boarding houses, as you have described them.

A. Yes sir. The reason I made such a hurried trip was because I did not have sufficient time. The testimony was to be taken at an earlier date, and I did not have sufficient time to spend any more time.

Q. What earlier date? The 4th or 5th of October wasn't it?

A. I believe it was. I was trying to think. It was along the first of October.

Q. Is it not a fact that it was first proposed to take this testimony on the 4th or 5th of October?

A. It is my recollection that it was along about that time.

Q. To be definite, wasn't it the 5th of October?

A. Well I do not remember.

Q. And so you left this territory in dispute something like eight days before then?

A. Well, it took some time to get in from the State line.

Q. How long would it take you to come from this territory that is disputed, to Asheville?

A. It took me a day and a half.

Q. Now Mr. Burns, I believe you said something in your direct examination this morning about the 59th mile tree being an undisputed point? Is that right?

A. Yes sir. All that I have ever heard is that it was an undisputed point,—all that I ever heard of the 59th mile tree was in the testimony given by W. D. Hale.

Q. Have you ever been to the 59th mile tree?

A. No sir, I have not.

Q. Well now, will you tell me why you didn't go to the 59th mile tree, which is regarded as an undisputed point to begin this reconnoisance of yours?

A. Yes sir, I can tell you.

Q. All right.

A. The day that I went to the state line, I followed up from a Toll Gate, up this old trail to the gap, and I had written to another man to meet me at the toll gate on the night before or early the next morning where the road crosses the Smoky Mountain road. I was not very familiar with the country on the north side of the river, and I did not know that the toll gate was near to the 59th
1087 mile tree. I supposed you would have to go up the road and back to the state line, and this man I sent for didn't come on the night before, and I sent my brother on the road where was the next place designated for him to meet us, and he waited there for several hours, and he never did come, so I hurried back over the other portion from the 60th mile towards the road, and I never went back to the 59th mile. I didn't have time. It was not necessary inasmuch as I had Mr. Gannet's survey line from the 59th mile tree to the Smoky Mountain Road where he tied on to my line, and his notes showing that it was a mile from the 59th mile tree to this gap, and I did not think it would be anything accomplished to go back to the 59th mile tree, as it was a point not in dispute.

Q. Well, so that's your explanation, and that's the reason why you didn't go to the 59th mile tree?

A. That delay was the reason I did not go that morning. I intended to go that morning.

Q. Is it not a fact you were sent down there to go over the work of Hale and Williams in regard to which they testified at Knoxville early in September, 1911?

A. No. My instructions were to take the Field Notes and go out into the country and see whether or not I could locate the state line from the Field notes, and I was to use my own judgement as to what points to begin on, and where to stop. I was not instructed to start on any particular point or to stop at any particular point.

Q. Well, the reason you were sent out there grew out of the examination of Hale and Williams at Knoxville, didn't it?

A. Well, perhaps it had something to do with it.

Q. You were present at that examination and heard all they testified to?

A. I believe I was present at the time.

Q. Did you examine the maps that they produced?

A. Yes sir.

Q. They had commenced they survey at the 59th mile tree?

A. Yes sir, that's what they testified.

Q. Now instead of going to that 59th mile tree you commenced your observations or recon-oisance up there in a field, where you couldn't swear it was one or two lines from the 59th mile tree? Is that a fact?

1088 A. No sir I didn't commence in a field. I commenced in a lower gap. There was a field on the right of the line in the Tennessee side.

Q. Now as far as you know, that may be two or three miles from the 59th mile tree, is it not?

A. I was governed by Gannet's field notes.

Q. You haven't any personal knowledge whether it was a mile to the 59th mile tree where you began?

A. I never went back to the 59th mile tree, but I have asked a number of people in regard to the location of it.

Q. Mr. Burns, do you know the difference between personal knowledge and knowledge acquired by hearsay from someone else?

A. Certainly.

Q. Now then, do you have any personal knowledge that the point where you began is a mile west of the 59th mile tree?

A. Certainly.

Q. Not only from Gannet's field notes?

A. That's what I base my answer on.

Q. And you didn't find any tree there?

A. No sir. Just a deep gap and the old trail.

Q. And yet a number of times you refer to the 60th mile tree.

A. That is just an error in speaking of a mile tree.

Q. When there was no mile tree there?

A. It was just a deep gap and the trail, that I base my knowledge from.

Q. Well you didn't know that that trail was the trail from Tellasee to Equeneetly?

A. Not from my personal knowledge because I didn't live there, but I know there was an old trail that goes through that gap.

Q. There are many old trails that cross this state line, are there not, Mr. Burns?

A. Well, I presume there are.

Q. How far is it from where you commenced to where the turnpike road crosses the state line?

A. Something like a mile and a half.

Q. Now, when you commenced there at that point, which you refer to as the end of the 60th mile, as a matter of fact you did not pretend to do any surveying there, did you Mr. Burns?

A. You mean to measure any lines there? No sir. I did not measure any lines from there.

Q. According to the Davenport Field Notes, immediately following the termination of the 59th mile, appears to be a call south 45, west 160 poles. You didn't run that did you?

A. No sir.

1089 Q. You didn't run out the next call to south 25, west 160 poles, either, did you?

A. No sir.

Q. Then at that last call, according to the Davenport Field Notes landing at a Hickory, 60th mile tree, then the next call is south 20, west 60 poles. You didn't run that out either did you?

A. A. I set that bearing from the gap. I set the compass at the bearing called for, giving five degrees variation.

Q. Did you run out that 60 poles?

A. I did not measure it, but you could tell about where 60 poles would come.

Q. Then you guessed it out instead of measuring it out?

A. No sir. I never measured any of the lines as I say, this last trip at all.

Q. Then you didn't do any surveying at all? Is not that a fact, on this trip?

A. Well, I went over the line that I had already surveyed.

Q. But you didn't attempt to measure it on the ground—the course and distance by these Davenport Field Notes?

A. No sir. It was not necessary to do it.

Q. I want to know whether you did?

A. No sir. I stated two or three times that I didn't measure any lines on this trip.

Q. Then, I believe you say that you got down there somewhere on the state line, and determined to your own satisfaction where the 64th mile tree ought to be? Is that right?

A. I stated that I took the distance as measured from the 59th mile tree by Mr. Gannet and myself and established from the distance where the 64th mile tree should have been.

Q. Did you find where it should have been?

A. Yes sir.

Q. Well, I believe you stated from that particular point you could easily see the gorge of Slick Rock Creek?

A. Yes sir.

Q. So you picked a place from the 64th mile tree from which you could see the gorge of Slick Rock Creek, did you?

A. No sir. I stated that according to the survey made by Gannet and myself, that I picked out this point which would be just five miles distant from the 59th mile tree, measured along the undisputed line, and from that particular point you could see the
1090 gorge of Slick Rock Creek, and you could see it also for two or three hundred feet back of that point, and for two or three hundred feet in front of that point.

Q. Any trees along there?

A. Yes sir. There's a few trees.

Q. Any white oak trees?

A. I didn't see any. There's been a heavy storm in that country since I had been over the ground before, and it blew down a number of trees, and also those water power people had been doing some triangulation in that part of the country, and they have cut them down.

Q. You were out there before there was any storm?

A. Yes sir.

Q. Did you find that 64th mile tree?

A. No sir.

Q. Well, now, about how far was that point which you selected for the location of the 64th mile tree to that marked fore and aft hemlock down on the bank of the river?

A. It's a little less than half a mile.

Q. Now of course you couldn't see that bluff over there coming down from Hangover from this point which you selected as the location of the 64th mile tree, could you?

A. You couldn't see the river there, but I don't know about——

Q. Couldn't see the Hangover Mountain from there?

A. I think you could. I am not positive about that.

Q. Is it not a fact that the Hangover is a great big mountain staring you right in the face across from that point?

A. It's a little to the left as you come down from there. You can see the Hangover Rock from every prominent peak along the ridge. From the Smoky Mountain side you can also see the Fodder Stack.

Q. From this 64th mile tree, according to the Davenport Notes, there is a call south 75, west 320 poles, crossing the Tennessee River, to a large white pine, south side of the river, at the mouth of a large creek, 65th mile. Now, of course I suppose you ran that line, did you not?

A. No sir. I took the bearing, testing the bearing from the 64th mile tree as located from the 59th, or the measured distance that I have testified to before.

Q. And didn't run the line Mr. Burns?

A. I didn't run it on that bearing. I measured it around the way the marks go.

Q. How far is it from that point which you selected as the
1091 location of the 64th mile by that direction to that point that you found over there on the south bank of the river, and which you think is the 65th mile tree?

A. It's something like a hundred feet over a like measure along the marked line.

Q. I asked you how far it was according to that course along that line from the place you selected as the 64th mile to the place you selected as the 65th mile?

A. I suppose it is something like a thousand feet short of a mile, maybe a little more.

Q. You didn't measure?

A. No sir. I could very easily determine it from the marks of the survey line. It is not necessary to run out the course to distance to determine where it will fall, because I have an accurate survey of the country.

Q. Well now how many times have you been down there at the mouth of Slick Rock?

A. I do not know. I have been there several times.

Q. Half a dozen times, haven't you?

A. Perhaps so, more or less.

Q. Did you ever see that pine tree that you have selected as the 65th mile tree before?

A. I never had it called to my attention before, and I do not recollect of ever seeing it before, but I suppose it stood there when I made my first survey.

Q. You mean to be understood to say it has been blown down since you first went there?

A. I couldn't state positively that it was, but it has not been blown down very long from the appearance of the hole it has left in the ground, and I was told by a man that lives near the place that it was blown down during that hurricane which took place after I had made my first survey.

Q. Sometime last year?

A. I believe it's been more than a year since that. I am not positive of that.

Q. Well now, assuming that the tree was standing when you were down there making your first observation and first survey of the line up the Slick Rock Creek, was there anything about that tree to indicate to you that it was a line tree, or a mile tree, or had anything to do with the state line?

1092 A. Well, if it stood there at that time, which I presume it did, I am confident that I looked at the tree at that time, although I do not remember that particular tree.

Q. And there wasn't anything about it to attract your attention in connection with the state line?

A. I stated in my direct examination that I did not see any marks on it that I could be positive were state line marks. I only saw one mark on it that looked very old.

Q. How many other pines down there?

A. Well, there's not any that stands there at the mouth.

Q. Now is this tree below the mouth or in the junction of Slick Rock Creek and the Tennessee River?

A. It stood below the mouth of the Slick Rock Creek about twenty-five feet, and about the same distance from the Tennessee River.

Q. Well Mr. Burns, what's there about it now that makes it appear to be a mile tree or a line tree either?

A. From the fact that you follow the undisputed line on the Smoky Mountain side from the 59th mile tree to the 64th mile as measured along the undisputed line and then you can run if *you* please, the bearings out 75 west and 324, disregarding the marked line if you please, and it will take you pretty close to the mouth of Slick Rock Creek.

Q. Did you just say that it ran out about four thousand feet?

A. I said possibly a thousand feet or maybe a little more.

Q. Using the term "possibly a thousand feet", would run beyond the mouth of Slick Rock creek about a thousand feet?

A. Yes sir. It would run something like that. The note says to a large white pine at the mouth of a large creek, and Slick Rock Creek is the only creek that comes into the Tennessee River from the south side that is any way near to *to* where this course and distance would run out, and from the fact that there's a large white pine there, which stands at the mouth of the creek, and on the south bank of the river, it is pretty strong evidence that that was the tree.

Q. Is that the tree that you said was a mile tree to your mind beyond the possibility of a doubt?

A. I said I believed it was the 65th mile tree. I do not think I said it was, beyond any doubt. I think I said the birch

1093 I believed was the 70th mile beyond any doubt.

Q. Which birch, the 70th mile?

A. Yes sir.

Q. I will come to that presently. Now on this tour of observation you say that you found a spruce pine at the end of the follow-

ing call in the Davenport Field Notes: due west 60 poles, spruce pine? Did you run that line?

A. I ran the line along the creek—measured along the creek, according to the bearings given in the Davenport notes with the line as I surveyed it.

Q. But you didn't run it out at all?

A. I didn't run out in course and distance the Davenport Notes as I stated two or three times before. I took and measured the line along the creek and along the top of the mountain.

Q. So you do not know just where due west 60 poles would be land do you?

A. As measured from where?

Q. In the Davenport Field Notes from the end of the call immediately preceding it?

A. As a matter of fact you couldn't take any old survey and just follow the course and distance and cut out the natural objects. You have to take the natural objects called for in preference to the course if you can find the marked lines leading to them. The call at the end of the 65th mile states in the Field Notes that it was at the mouth of a large creek. The next call of the field notes says ups said creek, and if you follow the field notes, you must follow the bed of the creek, and following up the bed of the creek for a distance of one mile it brings you to a spruce pine. It is blocked, and the block is in evidence in this case.

Q. Now, the first call in the 66th mile is south 80 poles. You didn't run that for 80 poles on a course of south?

A. I ascertained with my line that I had already measured.

Q. And you didn't run that course and call did you?

A. No sir. I didn't run any course and distance given in the Davenport Field Notes on this trip.

Q. Just wait until I get through. Then the next call is south 40, west 80 poles; the next call is south 70, west 40 poles; the next call is south 60 poles. Now do you know where that point would be according to these field notes, since you did not survey
1094 them and lay them down on the ground?

A. According to the Field Notes the point ought to be measured up the creek for a distance to the total number of poles called for, because the Field Notes shows up said creek.

Q. For all of these calls that I have given you?

A. You can interpret it that way.

Q. Well then, the last call south 60 poles that I read to you, according to your interpretation, is in the creek?

A. I do not want to be understood by saying that the course and distance given in the Davenport Field Notes if they were surveyed out according to course and distance would lay in *in* the bed of Slick Rock Creek, or would confine themselves strictly to the top of the mountain where the state line is in dispute, or where it is not in dispute, because these original surveyors did the work in a very short time, and they couldn't begin to take in all the winds of the road and all the windings of the stream, and they just took it in a general way, and that is all that I got out of it.

Q. Now, are you through with that?

A. Yes sir.

Q. Now, a while ago you said that this call south 80 poles up said creek meant that you would go right up the bed of the creek for 80 poles, did you?

A. Yes sir.

Q. All right. Then you also stated that you interpreted the remaining calls that I read to you—south 40 degrees, west 80 poles—also to be up the bed of the creek, didn't you?

A. Yes sir.

Q. And south 70, west 40 poles, also up the bed of the creek? didn't you?

A. Yes sir.

Q. And south 60 poles, also up the bed of the creek, didn't you?

A. Yes sir.

Q. Now, would not that then end in the bed of the creek?

A. Well, possibly it would but marking trees that way they would mark them first on one side and then on the other. The impression I wished to leave is the commissioners intended the bed of the creek to be the line up to the ridge that leads to the Big Fodder Stack. The course and distance that were given were just in a general way to take you up the general course of that creek.

Q. So the course and distance here was practically worthless?

1095 A. No sir. They are not practically worthless. They are taken sufficiently close to enable you to follow the marked line all the way through both in the disputed and undisputed sections of the state line.

Q. Now Mr. Burns, we agreed, I believe, that that last call I read you—south 60 poles—ended with us in the creek, didn't we?

A. I do not pretend to say where it ended, and I do not pretend to say where any of them end according to the interpretation that you try to place upon the course and distance given in the Davenport Field Notes. As I understand the Davenport Notes, when they reached the 65th mile, that they clearly state on the face of them followed up Slick Rock Creek for a distance of five miles, that is my interpretation of the Field Notes in that section.

Q. Well now, how far from the creek was that spruce pine that you say was the 66th mile tree?

A. Oh, just a short distance, I suppose ten or twelve feet. I do not remember exactly how far it was. It is tied in in my map and all you have to do is to look for it, and you can see it.

Q. You say you blocked it? Any "M", on it

A. No sir.

Q. Or any "66"?

A. No sir.

Q. I did not ask you if the Field Notes stated that it had the "66M" on it. Did you ever see any of those trees that did have the "M" and the number on them?

A. The 86th mile has.

Q. Did you ever see one that is undisputed that had it on it?

A. That 86th mile tree was the only one that I have seen that had any figures on it.

Q. You do not know, because you seem never to have cared to go there, that the 59th mile tree has "59M" on it?

A. Well I have heard it testified to that it had 59 on it, I do not know about the M. Maybe it has.

Q. Now you say that spruce pine was in a few feet of the creek, didn't you?

A. I said on the bank of the creek.

Q. Now I believe you said something about finding a birch, which you came to the conclusion was the 67th mile tree? That right?

A. I do not think I stated that I came to the conclusion that it was the 67th mile. No sir. I said I found a birch at where
1096 the trail crosses the creek.

Q. You said something about having some marks upon it that looked like they had been made by an edged tool, and and "M"?

A. It resembles an M. Yes sir, but one part of the M. was incomplete.

Q. That wasn't a new discovery to you?

A. I never had seen the tree before.

Q. Didn't you testify this morning in your original examination that the only one of these trees to which you directed your attention in testifying was that birch up there at the 70th mile?

A. Well, I said that that birch—there wasn't any doubt in my mind that that birch at the 70th mile was the 70th mile tree.

Q. Come back to my question. Didn't you testify this morning that that birch which you now state is the 70th mile was the only one of these trees that you had not seen before and testified about before?

A. Well, I possibly said it was the only one that I was sure was the state line mark.

Q. Didn't you testify that that birch which you now claim to be the 70th mile tree was the only tree you had not found before?

A. Well I say the only one that I did not find before that I was sure bore the state line marks. I am not sure that the 67th mile bore state line marks. I was just telling you what I found there.

Q. You never testified about that figure on that tree before, did you, in any of your examinations?

A. No sir. The point I meant to leave is that this 70th mile tree was birch, as was the original mile tree, and that there is some doubt in my mind about the birch at the 67th mile being a mile tree.

Q. Don't let us get away from the point. You never did testify before about that marking on that supposed 67th mile tree looking like the letter M, or a part of the letter M?

A. No sir.

Q. Well, you had seen that tree before, had not you?

A. Well, I never had it called to my attention before. Possibly

I had. I can't remember all the trees I ever looked at, when you go through a mountain where there's so many trees.

Q. Who called it to your attention this time?

1097 A. I found it myself.

A. Is this the first time?

A. It is the first time I ever noticed any particular marking on it.

Q. So then you were mistaken when you testified this morning?

A. No sir, I was not mistaken.

Q. Wait until I finish my question. So you were mistaken when you testified this morning that the birch which you now claim to be the 70th mile tree was the only tree that you had not found before?

A. What I said this morning, and what I intended to say this morning was the birch was the only tree in that section I was sure was a State line tree.

Q. So you stick to it now?

A. I am almost positive but not as sure as the birch, but that the white pine at the mouth of the creek is a mile tree, but there is nothing on that tree to make it absolutely certain any more than its position.

Q. Well, now, what's there on that birch which you claim to be the 70th mile tree that indicates it is that?

A. It has three old hacks on it.

Q. Is that all? No. 70?

A. No sir.

Q. No M?

A. No sir.

Q. Did you block it?

A. No I did not block it, because it is kind of a twisted crooked thing, and I did not believe I could get anything out of it, and I did not want to destroy any old marks upon it.

Q. So you have become careful about blocking trees?

A. No sir, I haven't become careful. If I think it is necessary, I do it; if I don't I do not.

Q. On which side were these three hacks?

A. It was on the side claimed by North Carolina.

Q. That is on the east side?

A. Yes, on the east side of the tree.

Q. Now, you were asked this morning by counsel for North Carolina whether or not at the end of the 69th mile running up over Hangover lead, and ridge from the river, beginning directly opposite that marked fore and aft tree, there was a maple on the east bank of a creek up there? I believe you said there was not, did you?

A. No sir. The question, as I answered it, as I understood the question, was not the distance from the Tennessee River the distance as measured along the undisputed line from the 59th mile tree along the undisputed and then along the Tennessee contention.

1098 Q. Well, that fore and aft tree down there is on the undisputed line, is not it?

A. Yes sir.

Q. All right. Then were you not asked by counsel for North Carolina this morning whether or not at the end of each mile going

up that Hangover Ridge or lead, there were trees similar to those called for in the Davenport Field Notes?

A. Yes—but as I said—

Q. And you told him there were?

A. As I said the miles were at the ends of the miles as from the 59th mile tree and not from the Tennessee River.

Q. Well, assuming that the 64th mile tree was where you picked out for it, and then running the miles over on the Hangover ridge or lead, you were asked whether or not there were trees similar to those called for in the Davenport Field Notes?

A. Yes sir.

Q. And you were asked if there was a maple on the east bank of a creek up there on that ridge, were you not?

A. At the 69th mile, yes sir.

Q. On the Tennessee contention line?

A. I believe I was and I stated there was a maple on the ridge there pretty close on that distance.

Q. There is not any creek up there?

A. No sir.

Q. Of course not. But this old 1821 map from the archives of Tennessee does show that the 4th mile from the river is up a mountain instead of on the bank of a creek? (Shows map.)

A. As it appears from the map.

Q. It shows that it was on a ridge or a mountain?

A. Yes.

Q. Now I believe you stated that you went to try and find a white oak at the end of the 72nd mile, as you correlated the Davenport Field Notes with your own field notes, but you didn't find any white oak marked there, did you?

A. I stated that I did not find any marked white oaks that I believed had the state line marks. I stated that the white oaks bore recent marks.

Q. Those trees you found big enough to have been marked in 1821?

A. Yes sir.

Q. Well now, Mr. Burns, did you go to the end of this call in the Davenport Field Notes—south 30, west 200 poles to a pine, 71st mile?

A. I examined that place *that place* in regard to the measure line that I made in my survey.

1099 Q. But you didn't go down off of the top of the Fodder Stack there south 30, a distance of 200 poles? Do you mean that you measured from the top of the Big Fodder Stack?

A. Yes. The 71st mile stands about, according to the distance, stands about a little more than half way between the creek and the Big Fodder Stack.

Q. Well you didn't go down south 30, west 80 poles to a white oak off of the top of Big Fodder Stack ridge, did you?

A. Is that the call where it says to the 72nd mile? Yes sir. I measured 80 poles.

Q. But you went on a course south 30, east?

A. I followed the top of the mountain.

Q. Well that's in south 30, west?

A. No sir. There is an error as I stated in my previous examination.

Q. So you went to the place to find the white oak, 72nd mile, according to your location of these Davenport Field Notes?

A. No sir, not wholly, because the Davenport Field Notes says it is on the top of a ridge or on a ridge, between the aforesaid creek and Citico Creek.

Q. Now, you didn't mean to say the Davenport Field Notes say on the top of a ridge?

A. The Davenport Field Notes say white oak, 72nd mile, on a ridge between the aforesaid creek and Citico Creek.

Q. Well, now, did Mr. Slagle find anything more than you did?

A. I can't testify what Mr. Slagle found. Mr. Slagle was with me.

Q. Did he call your attention to anything you had not found.

A. I do not remember that he did. Yes, Mr. Slagle was the first man that found a birch, 70th mile, that we have been speaking about. He called my attention to that.

Q. How far off was that line that you had run before from that birch that you now think is the 70th mile?

A. Well, it's just right close to it.

Q. How far is "close to it?"

A. Well, fifteen or twenty feet, more or less.

Q. And you hadn't seen it before?

A. I never had noticed any old marks on it before. I might possibly have seen it, and overlooked the marks. I have done that lots of times.

Q. Some of these marked trees are on one side of the creek,
1100 and some on the other? Is that right?

A. Yes sir

Q. Now lets see if I understand you about that pine there below the mouth of Slick Rock. How big is it?

A. Its about 36 inches in diameter. I never measured it. I just estimated it.

Q. Well now about an annual ring on a pine tree is about an eighth of an inch wide is it not?

A. It depends altogether on the tree, and where it stands. I took a chip out of this particular tree for the purpose of investigating the growth of it, and for the last forty or fifty years it only grew about an inch or an inch and a half in diameter. The tree has been dead a number of years from its appearance. I could not tell how long, but if it was an original mile tree, it was a very large tree at that day and time.

Q. About how big is that maple that you are talking about on the east bank of the creek?

A. About two feet in diameter.

Q. Well about ninety years ago that would not have been a very big tree would it?

A. The growth of that maple was very find. It was a large tree ninety years ago.

Q. How do you know?

A. Because I blocked into it.

Q. What did you find?

A. Didn't find anything.

Q. Didn't find any mark at all did you?

A. There were no marks on the maple except some recent marks. I do not know how they came to be there, but the maple was one of those that shed the bark off, or has shed its bark, and you couldn't see old marks.

Q. No, but it leaves a scar?

A. If it had been struck through to the wood it would leave a mark in the wood otherwise it would not show in the bark, because the bark was scaled off.

Q. The bark of a maple is very thin?

A. As a rule it is.

Q. And if you struck it with an axe at all, the probabilities are it would go through the bark to the wood?

A. Well, if you struck it with a sharp tool it ought to cut through to the wood.

Q. Is it not a fact also that wherever you strike the bark or cut through the bark of the maple, it will leave a scarred place in the bark that never does disappear?

1101 A. I couldn't say about maples, but I have noticed white oaks where the old marks have been cut through to the wood, and the bark would shed off. I have seen them ready to fall off. As to maples I do not know. I suppose it would shed off there so you could not see it.

Q. You might suppose it of any tree, might you not?

A. Well, any tree that sheds its bark. There are some trees that do not hardly shed their bark at all.

Q. What kind of a tree is a birch? Is it a bark-shedder too?

A. Well, some of them hold marks for a long long time.

Q. And other of them are kinder scaly like?

A. I do not know particularly. I never have had my attention called particularly to birch timber, but some of them holds marks for a long time.

Q. You didn't find any sycamore up there that was marked?

A. I didn't find any marks, found plenty of sycamores. Sycamore is a tree I never saw a mark on in my life that's an old mark.

Q. How big is this tree you say is the 66th mile tree?

A. I didn't say any tree was the 66th mile tree. I said there was a large tree that fell a distance.

Q. How big is that tree?

A. Well, it is on my original map. My recollection was it was a little over two feet. It is stated on there about how big it is.

Re-direct examination.

Mr. SONDLEY: Mr. Burns you were asked about not going to the 59th mile to begin your investigation?

A. Yes sir.

Q. Did you know any more reason for picking on the 59th mile tree than to pick on the place where the undisputed 60th mile tree was?

A. No sir.

Q. Was there any dispute about where the 60th mile had been?

A. Never heard of any.

Q. You were asked in regard to the point where you said you could see for about four hundred feet, I believe, the mouth of Slick Rock Gorge, about picking on that place? How did you find that place?

A. I found that place by measuring the number of miles from the 59th mile to the 64th mile tree, along the undisputed line.

Q. Did you pick on that particular place for that mile tree because it gave a view of the gorge?

1102 A. No sir. Because it was the distance from the 59th to the 64th mile tree as measured along the undisputed line.

Q. Would there be any greater discrepancy between the Davenport Field Notes where there are slight discrepancies along the North Carolina contention of the disputed lines, and between the Davenport Field Notes on the undisputed line? Did they conform advertently, or advertently in those two localities, the disputed and the undisputed?

A. No sir. They followed the North Carolina contention as closely in the disputed sections as they did in the undisputed sections. There are slight errors in them all the way through, but they are sufficiently accurate to enable you to follow the line, both in the disputed and undisputed section.

Q. Did you have any reason whatever for not going to the 59th mile tree to begin with, more than for not going to any other tree that was not as near?

A. No sir. I didn't see any particular use for me going back to that tree, because it was not in a disputed part of the state line, and I had already investigated five miles up in going to it that was undisputed, and I thought that was sufficient to determine the accuracy of the Davenport Field Notes and the undisputed.

Q. Why did you not chain on your last trip, the portions of the line that you went over?

A. Because it wasn't necessary to chain it. I had surveyed all along the part of the line I was over, and it was accurate, and it would be useless expense and time to chain it again.

1103 On November 4th, the next witness for the State of North Carolina was introduced, and having been duly sworn, he deposed and said:

Mr. SONDLEY:

Q. What is your residence Mr. Slagle?

A. In Macon County.

Q. What State.

A. North Carolina.

Q. How long have you lived there?
A. All my life.
Q. How old are you?
A. Sixty-four years old.
Q. What is your business?
A. I am a surveyor.
Q. How long have you been engaged in the surveying?
A. Forty-four years.
Q. How active have you been in it during that forty-four years time? Has the activity been occasional or standing, or about how, generally?
A. It's been my principal business.
Q. With what character of lands has your experience been?
A. Principally had in mountain lands.
Q. Any experience in timber lands—in surveying them?
A. Yes sir.
Q. How extensive?
A. Most all of the surveying I have done has been timber lands.
Q. Where are these lands you have been principally exercised in surveying during these forty-four years?
A. They lie mostly in Macon, Swain, Jackson and Transylvania Counties.
Q. North Carolina?
A. North Carolina.
Q. That is the mountain region of North Carolina?
A. Yes sir.
Q. Have you ever been on the line between North Carolina and Tennessee and done any surveying in that country?
A. Yes sir.
Q. For how long have you been conversant of that country and surveying in it?
A. The first surveying I ever did was on the line between what is now Swain County and Tennessee.
Q. Do you think from your experience in surveying that you are capable of forming an opinion satisfactory to yourself in regard to surveying questions and matters pertaining to landsurveys?
A. I think so sir.
Q. Do you think from your experience in the woods, and in that portion of wood especially that relates to surveying, that you would be capable of forming an opinion satisfactory to yourself as to matter of wood craft involved in surveying lands?
A. I think so sir.
Q. Have you had any considerable amount of observation
1104 of line marks put upon trees old and recent?
A. Yes sir.
Q. Were you at any time within the last two months connected in any way with the litigation now pending in the Supreme Court of the United States between the State of North Carolina and the State of Tennessee in regard to a portion of the dividing line between them?
A. No sir.

Q. When did your first connection with that matter in any way begin, and what was that connection, and how did it begin?

A. I do not remember the exact date. I had a telegram from General Davidson asking me to go to the Turnpike on the Tennessee side and meet some gentleman, and go with him on the survey of that line.

Q. Was that your first connection with the matter?

A. Yes sir.

Q. Now about how long ago has that been.

A. It has been about two months ago.

Q. Where did you go, and whom did you meet?

A. I went to the Turnpike, what is known as the old Turnpike, three miles nor*ht* of the Tennessee line, met with Mr. Burns.

Q. Mr. D. B. Burns?

A. Mr. D. B. Burns.

Q. Had you any proposition of any character in regard to the location of the portion of the line between the two states now controverted, before that time?

A. No sir.

Q. Have you any interest whatever in the matter?

A. None whatever.

Q. Well, you met Mr. Burns then, and where did you and he go?

A. We went first to the gap of the mountain on the Tennessee line on the northeast side of the river, what is known as the 60th mile tree.

Q. You found no tree there?

A. Found no tree. We followed the main ridge of the Smoky Mountains to a point near the river.

Q. Did you find any, line tree along there?

A. We found some old marked trees—a few.

Q. Marked for what?

A. Marked for the state line.

Q. Was there any dispute as to that being the state line at that place that you have heard of?

A. No sir.

Q. How did you and Mr. Burns happen to begin at the point where it was said that the 60th mile tree had stood?

A. We wanted to begin at some known point on the line, so as to take the bearings of the ridges, and compare them with some old field notes that he had.

1105 Q. Did you think that to begin there would furnish us probably as good a test of those notes, and as to what they were designed for as beginning at any other point beyond?

A. I think so sir.

Q. Well, as you w*ne*t along, did you find any mile trees before reaching the Tennessee River?

A. We did not.

Q. Did you find mile trees along there at various places?

A. We found a few line trees.

Q. Do you remember when you came to the point where the 64th

mile should have been, anything particular in relation to the possibility of seeing the Slick Rock gorge?

A. We could see the Slick Rock gorge for a short distance on the top of the mountain at that point.

Q. About how great was the place in which you could see the mouth of the Slick Rock gorge at that locality?

A. I do not think more than six hundred feet.

Q. How common are the places along that mountain that you traversed from which you could see the mouth of the Slick Rock gorge?

A. I do not remember any point.

Q. From that point could you see a white pine of considerable size standing at the mouth of the Slick Rock gorge do you think?

A. If there had been a white pine standing there, we could have seen it from that point.

Q. How did you get from that point to the mouth of the Slick Rock, if you went to that mountain?

A. We followed a ridge that struck the Tennessee River considerably above the mouth of the Slick Rock Creek, them crossed the river and went down the river to the mouth of Slick Rock.

Q. You didn't go down at all on the north side?

A. Crossed the river and went down on the south west side.

Q. Well, when you got to the mouth of the Slick Rock Creek, was that the point at which you had seen the mouth of the gorge from, back at what you took to be the place of the 64th mile tree?

A. Yes sir.

Q. Now please tell us of the observations from that point you made. Was there any other creek that you could follow the calls of the notes that you were attempting to follow, except Slick Rock creek?

1106 A. I do not think so. I did not see any.

Q. Well, did you then see on that occasion, or when you were there, a white pine, that Mr. Burns has spoken of, that was down and bent?

A. I saw a white pine stump, but I didn't see a white pine log.

Q. Didn't discover it at that time?

A. I did not.

Q. Now, did you examine everything there, so that you would have necessarily discovered it, if it had been there?

A. No sir. I did not make any investigation after seeing the stump. There was a stump a short distance from the mouth of the creek, and I did not hunt anything else.

Q. Passing from that point then, what did you do with Mr. Burns?

A. Well, we set the compass at the mouth of the creek, south I think, and then ran up the creek for about five miles.

Q. Following the copy of the Davenport notes to any extent?

A. We set the compass frequently when there would be a bend in the creek. We didn't set it at every place, only where there would be a considerable bend in the creek, we would set the compass out.

Q. You remember that the mouth of the creek was called for in those notes as the 65th mile?

A. I do, not remember what mile. I remember that the mouth of the creek was called for in the notes, the mouth of a large creek was called for.

Q. Now, if that be treated as the 65th mile, the next call in the notes on the stub (I hand you the original please) you will find to be a spruce pine at the end of the 66th mile. (Witness examines the book) What did you find, if anything between these two points, the mouth of the creek and the next mile tree called for thereafter in the notes.

A. We took the bearing of the creek at a view place along between the 65th and the 66th. I do not remember that we found any trees marked at all, and I did not see any spruce pine.

Q. Did you see anything at the end of the mile distance from the mouth of the creek?

A. I did not.

Q. Did you find any pine along there at any point that had been blocked or otherwise?

A. Yes sir.

Q. Where did you find that?

1107 A. I do not remember at what distance I found it. I saw a blocked pine there, but I do not remember at what distance. I do not remember how near the 60th mile tree.

Q. How nearly was it located on the bank of the Slick Rock?

A. It was near the bank of Slick Rock.

Q. Do you remember which bank?

A. My recollection is the east bank.

Q. Then the next call for a mile tree is what there, a birch?

A. At the 67th mile. Yes sir.

Q. Did you find any birch tree where that mile should have run out or practically so?

A. Yes sir. There was a birch tree there, an old birch with some marks on it, but we couldn't make out what they were for.

Q. How old were the marks?

A. They were quite old. I couldn't say just how old.

Q. How do they tally in appearance with the admitted or uncontroverted marks on the north side of the river treated as state line marks and understood as such? Were they as old or junior?

A. I did not see any birch trees on the other side of the river, but I think they were as old.

Q. How did you get that distance between these points?

A. I took the statement of Mr. Burns.

Q. You did not chain?

A. I did not.

Q. You used your compass some but did not chain?

A. I used the compass quite frequently, but did not use the chain at all.

Q. Now what is the next call please? Where we have the 68th mile to end? What is there said to be at the end of the 67th mile, a sycamore? Did you find a sycamore at what seemed to be that distance?

A. Yes sir. There is a large sycamore standing on a little island in the creek.

Q. Did you find clumps?

A. There was a little clump of sycamores, but I only noticed one on the creek besides that.

Q. Now where was that sycamore?

A. It was in what is apparently a little island in the creek, part of the creek was running on one side and part on the other.

Q. What is the next call, please sir?

A. Next call for a maple on the east bank.

Q. What did you find on what appeared to be about a mile from the sycamore?

A. There is a maple there and marked, but not as old as

1108 the other marks.

Q. Not old enough for a state line mark of 1821?

A. I don't think so.

Q. What was the next distance of a mile to end with?

A. The birch on the west bank of the creek.

Q. That was the 70th mile?

A. 70th mile.

Q. What did you find there?

A. I found an old birch standing between Slick Rock Creek and a large branch that comes into the creek.

Q. Who discovered that birch?

A. I did.

Q. How did you happen to find it?

A. I was looking for a birch and found this one.

Q. Why did you look for a birch at that point?

A. Because the notes called for a birch on the west banks of the creek. I was looking for a birch on the west banks of the creek, and then I found that.

Q. Now what was the marking of that birch?

A. There was one very plain mark on the side next the creek, another that was not seen so plain, and I thought another, but would not be sure of it, and on the side opposite the creek there was no marks at all to be seen. Now the tree lies toward the creek.

Q. Was that birch old enough to have been marked in your opinion in 1821?

A. Yes sir.

Q. How old were those marks in your opinion, or practically, as nearly as you can say?

A. I think they were old enough to have been made in 1821.

Q. Did you make any effort to find out anything about any marked tree beyond that birch, and its relation to that birch?

A. Yes sir. We set the compass on the call due south from that.

Q. The call of the Davenport Field Notes?

A. The call of the Davenport Field Notes, and found a pine that had been blocked recently exactly in line from the birch, the same distance further from the poplar that was marked in block.

Q. How old apparently was the mark on the poplar?

A. It had the appearance to me to have been marked long enough ago to have been marked in 1821.

Q. After you left the birch, did you follow the creek further?

A. We did not.

Q. Where did you go from there?

A. Took the ridge that leads from the birch to the top of the Big Fodder Stack.

1109 Q. These trees that you had seen between the mouth of the Slick Rock and the last mentioned birch, were they old enough in your opinion, to have been marked in 1821?

A. The sycamore was old enough, and the birch was old enough. I think the maple was old enough to have been marked then.

Q. Do you remember one call there, in going from the mouth of the Slick Rock to the end of the 67th mile, it calls for the Cheoyee Path you see from the notes? Did you or did you not find a path at that place?

A. There was a very old path there.

Q. Could you judge whether it was going in the direction of the Cheoyee River or not?

A. Yes sir. It goes to Cheoyee River. I followed the path leading from that point to the Cheoyee River.

Q. Now in these distances that you did not chain through there, would your experience as a surveyor enable you to tell whether or not they were about the correct distance of a mile each time?

A. I should say they were about correct.

Q. Any considerable departure?

A. No sir.

Q. Now, when you went up towards Big Fodder Stack from that birch tree, where did you go?

A. We went to the top of Big Fodder Stack.

Q. What course did you take from there?

A. From the top of the Big Fodder Stack, we ran south 30 west.

Q. Now, that I believe carried you to the 72nd mile?

A. Yes sir.

Q. What was the call there?

A. Call for a white oak.

Q. Did you find any white oaks there?

A. There was a clump of white oaks. I found one marked as a line tree, but nothing marked as corner tree.

Q. How old was the mark of the line tree?

A. It was a very old mark.

Q. Old enough to have been made in 1821?

A. I think so.

Q. What were the marks indicative of?

A. The state line or a private survey.

Q. Were you on that point between Slick Rock Creek and Citico Creek?

A. On the ridge, yes sir.

Q. Where did you go from there?

A. We followed the ridge in the direction of Stratton Bald.

Q. Well, where did you land there next?

A. I do not remember to have seen any marks after leaving the place where this white oak should have stood and the top
1110 of the Stratton Baid, or near the top of it.

Q. Did you go to the point called Junction?

A. Yes sir.

Q. Following the state line take you there?

A. Yes sir.

Q. Did you go further on that investigation tour with Mr. Burns in that direction?

A. I did not.

Q. What did you do from there?

A. I turned and came by the Hangover and down the ridge from the Hangover in the direction of the Tennessee River.

Q. Did you make any investigations as you came down that way to see if you could find any marked trees bearing state line marks?

A. Yes sir.

Q. With any care?

A. Yes.

Q. Did you find any?

A. I did not.

Q. How far down the Hangover Ridge to the Tennessee River did you come?

A. About two miles or two and a half.

Q. To what point?

A. To a point near where they call Big Fat Gap I believe.

Q. And where did you go from there?

A. I turned from there and went to Dave Orr's on Bear Creek, and I was not on the line afterwards.

Q. Now in making these investigations you talk of from where the 60th mile tree was taken by you to have stood up to the Junction, and in coming back to the Big Fat Gap by way of Hangover did you take with you a copy of these Davenport Notes?

A. Had a copy of the Davenport Field Notes until we got to the Junction. Mr. Burns had them. I didn't have any after leaving him.

Q. Do you think you would have found that birch at the point where you described as being where the North Carolina contention leaves the creek I believe, but for the aid of the Davenport Field Notes likely?

A. I do not think so.

Q. You, I believe, were never over the contention in the neighborhood of Tallecoa at all?

A. Never.

Q. Now, coming back please Mr. Slagle, to the beginning, did you discover whether or not, the surveyors in marking the line through there had apparently gone along, measured and marked the top of the ridge from the point assumed to be the 60th mile on?

A. We hardly found enough marks to be sure they had
1111 marked the top of the ridge all the way. What marks we found were on top of the ridge. The appearance was that they had taken the bearings from one high top to another.

Q. And followed the ridge between by marking?

A. Yes sir.

Q. What in your opinion had they done from the 64th to the 65th mile in that regard, the 65th mile ending at the mouth of the creek on the south side of the Tennessee River?

A. I think they took the bearing to the mouth of Slick Rock Creek.

Q. From what place?

Q. From the 64th mile tree.

Q. How did your investigation lead you to think, they had measured a mark through in the direction of the bearings all the way, or otherwise?

A. I couldn't tell about that. There is a marked tree near the river, some distance above the mouth of Slick Rock Creek. It is the only marked tree I remember to have seen. Whether this was made at that time, or surveying some other tract of land, I could not tell. I did not see the marks on it. I saw where the tree had been blocked.

Q. In the use you made of the Davenport Field Notes, I wish you would state whether or not in your opinion as a surveyor, it was possible for any man to make those notes without having been connected with a survey of the line along there in accordance with the North Carolina contention?

A. I am very sure that whoever made those notes I hold in my hand, was along on the mountain and on the creek that North Carolina contends the line should be, when he made these notes.

Q. Could the notes fit the North Carolina contention substantially and do they fit it substantially?

A. Substantially, yes.

Q. Could they be made to fit without violating in every particular the Tennessee contention up Hangover to the Junction?

A. They could not.

Q. Now did you notice any more conformity to the undisputed line on the part of these notes than to the North Carolina contention, where the line was disputed, on the part of the notes?

A. Just about the same I think.

Q. The general trend of the North Carolina contention from the Tennessee River to the place called Junction is bend toward what direction?

A. It is a bend toward the left.

1112 Q. How is the Tennessee contention in its general trend from the Tennessee River to the Junction?

A. It would be toward the right.

Q. Which does the Davenport Field Notes endorse in that particular?

A. They endorse the bend toward the left.

Q. From your experience as a surveyor, and your observations from along there of that line, both at the disputed place near Slick Rock and on Slick Rock, and at the undisputed part of the territory, and your use of the Davenport Field Notes, would you say that the Davenport Field Notes conformed to the line as North Carolina

claims it as nearly as old surveyors of that day ordinarily did or less nearly—or more nearly?

A. They conform to the line fairly well, not exactly, but as near it as men much later than that were in the habit of doing when they were following a mountain with an attempt to get a- acreage.

Q. Have you had experience in attempting to trace old lines along these mountains in Western North Carolina?

A. Yes sir.

Q. Would these notes suffice to enable a person to find where the state line was when you take into consideration what was then upon the surface of the ground there, such as the mouth of Slick Rock, etc.?

A. I think so.

Q. And according to what contention would they enable him to follow, in the disputed territory over Slick Rock?

A. They would follow the North Carolina contention.

Q. Would one using these notes and endeavoring to find the state line, have any difficulty out there in finding where the state line was in your opinion, knowing it called for the things that you know it does call for, etc.?

A. When using these notes and taking them in connection with the fact that the Tennessee line is supposed to run with the top of the mountain you would have no difficulty in following the top of the mountain.

Q. Does that answer of yours apply to the contention of North Carolina going to Slick Rock and up to Big Fodder Stack, and out to Junction, as well as to the portion north east of the river where it is undisputed.

1113 A. It would where it leaves Slick Rock Creek five miles from the river to the Junction, and the same on the other side of the river, the north east side of the river.

Q. How would it fit in going up Slick Rock?

A. These notes fit Slick Rock Creek fairly well.

Q. Would it be a fair test of any old Notes you think, to simply take the course and distance given and discard the natural objects called for?

A. I think not.

Q. Would you, if you knew that a survey had been made and that you had the genuine notes of that, expect people to locate it with an old survey by discarding the natural objects called for, and by taking course and distance entirely?

A. No, I always try to get the help I can from the natural objects.

Q. Would it be safe to follow course and distance to the exclusion of natural objects in those old surveys?

A. It would not.

Cross-examination by Mr. CATES, attorney-general for Tennessee:

Mr. CATES: Mr. Slagle, as I understand it, part of your work as a surveyor you said had been done in Swain County, North Carolina, and on the line between North Carolina and Tennessee?

A. Yes sir.

Q. When did you do that work?

A. The first time I was over there was in 1867.

Q. Were you surveying out North Carolina grants in Swain County?

A. Yes sir.

Q. That work was then altogether north of the Little Tennessee River?

A. Yes sir.

Q. And it is Blount County, Tennessee, that is immediately west of Swain County, North Carolina?

A. I think so, sir.

Q. How far back did that line from the Little Tennessee River, I am referring to the boundary line, between the States, did you do any work?

A. You mean how far from the river?

Q. I mean on the boundary line between Blount County, Tenn., and Swain County, N. C. How far north east from the river to a place called the head of the big Chestnut Ridge at that time, which is on the head waters of Hazel Creek?

A. Some ten miles or more north east of the Little Tennessee River. Yes sir. From the place about where the 64th mile tree is.

1114 Q. Now have you ever been to the place where the 59th mile tree stands on the ground today?

A. I passed that place in making that survey I suppose, but I did not know the place. It has never been pointed out to me.

Q. Have you seen any other trees back on that undisputed part of the line which are recognized as mile trees?

A. I do not know of any.

Q. Do you know as a matter of your own personal knowledge or from tradition that the mile trees had on them the mile followed by the letter "M"?

A. I do not know.

Q. Now you said that you began at a place where the 60th mile tree was supposed to have been, I mean you began when you were down there with Burns in September. Now you did not know where that 60th mile tree was, did you Mr. Slagle?

A. I did not, except that it calls from the trail from Equaneetly to Tellasee. We began at an old gap where a trail went through.

Q. You did not know that was the old trail from Equeneetly to Tellasee?

A. It was on the line between Equeneetly and Tellassee?

Q. But as a matter of fact, there's a road, a public road called a turnpike that goes from Tellesee down in Tennessee, and on the Tennessee River up into North Carolina to Equeneetly is not there?

A. That's been made long since 1821 though.

Q. How do you know that fact, Mr. Slagle?

A. By tradition. I have been told when it was made.

Q. Do not you know also by tradition that that road was built on that trail from Equeneetly to Tellasee?

A. I do not know about that.

Q. You — not know to the contrary, do you?

A. I do not know to the contrary at all, but I do not know it.

Q. Now, Mr. Slagle, as I understood you to say, you and Burns began up there on a point that you have described and assumed to be about the location of the 60th mile tree, and turning to the Davenport Notes, a copy of which you say you had with you, I find that the first call is south 20 west 60 poles. Now you didn't actually run that call out did you?

A. We did not measure the line. We set the compass south 20 west and went about 60 poles to an angle in the ridge. We didn't measure the lines over it.

1115 Q. You measured the next course south 50 west a hundred poles, did you?

A. We didn't measure any lines.

Q. Now will you turn to the notes which have been used in your direct examination and point out to me any natural objects called for in the 60th, 61st, 62nd, 63rd or 64th mile?

A. There were no natural objects called for in any of these points except trees.

Q. Now in the absence of finding a tree marked as a mile tree, the duty, and the proper course for a surveyer to pursue, would be to have run the line according to the course and distance would it not?

A. In this case we understood that the top of the Smoky Mountains was the line.

Q. But Mr. Slagle, there's nothing about the top of the Smoky Mountains in these notes along there, is there?

A. No.

Q. Then without assuming the top of the Smoky Mountains to be a line, and without finding a natural object called for, a surveyor would just take the course and run the distance called for — the notes, would not he?

A. He could do that.

Q. Now, I believe you said that you came down to where according to the measurements that had theretofore been made by Mr. Burns, as he told you, the 64th mile tree ought to have been on the top of the ridge? That is correct is it not?

A. Yes sir.

Q. Then you went on down that ridge straight toward the river, and on the bank of the river you found a marked fore and aft spruce pine, didn't you?

A. There was a fore and aft spruce pine near the river that had been blocked. I did not see any marks.

Q. That spruce pine was pointed out to you by Mr. Burns as being a recognized line tree was not it?

A. I do not remember what he said about it, but he had blocked it I think, or been present when it was blocked.

Q. Now you spoke of it being generally understood and assumed that the line between the states was on the top of the mountain, on the crest of the mountain. That is correct is not it?

A. It is on the northeast side of the river.

Q. Well, now, coming down toward the river from where you started, where you and Burns started, looking across, you
1116 could easily see that great mass of mountain over there, which is called Hangover, cannot you Mr. Slagle?

A. You can see Hangover from a great many points along the top of Smoky Mountain. We could see Hangover from the place where the 64th mile tree is said to be.

Q. But you can coming down the Smoky Mountain on the northeast side of the river toward the Tennessee River, see that great mass of mountain over there which is called Hangover, cannot you?

A. A great many places, yes sir.

Q. And that is staring you right in the face all the way?

A. As you come down little Tennessee River you can see it from a good many places.

Q. That's the biggest thing over from the south side of the river there, is it not Mt. Slagle?

A. Yes, the Hangover and Hao are the highest.

Q. That is the main mountain over there, is not it Mr. Slagle?

A. It's the *am*in mountain at a distance. It's not the main ridge leading away from the river; that is, it does not appear as large coming down the Smoky Mountain when you go any ways over the river as the ridge from the Little Fodder Stack and the Big Fodder Stack, and along in there.

Q. I understand what you mean by that Mr. Slagle, but it is not contended in this case that the line is down on the little Fodder Stack by anybody. Well now coming down the Smoky Mountain to the Little Tennessee River, are not the Hao and the Hangover on the south side, the nearest part of the main mountain to you?

A. I do not know what you mean by being the main mountain. You couldn't see anything beyond the Hangover and the Hao, because they shut off.

Q. You couldn't see anything beyond the Hangover and the Hao, because the Hangover and the Hao by reason of their bigness and their immensity shut off the mountain back of them?

A. They shut off the mountain back of them, but not the mountain to the west.

Q. Coming down that main ridge to the mountain on the north side of the river toward the river and there up, no doubt but
1117 that in appearance Hangover and Hao on the south side are the main mountains?

A. They are the highest peaks in sight.

Q. Higher by several hundred feet and bigger than any other range or peak around there, are they not?

A. I do not know that they are any higher than the Stratton Bald, but they are in sight plainer than the Stratton Bald.

Q. Coming down the Smoky Mountain on the north side, east side of the river, on the state line, and looking to the southwest, Hang over is first is not it?

A. Yes sir.

Q. And then Hao, and then Stratton Bald along that Hangover ridge, are they not?

A. Yes.

Q. Now all three of those are east of the Junction, are they not?

A. Stratton Bald is very near the Junction.

Q. Still east of it?

A. Yes sir.

Q. Now can there be any doubt, and is there any doubt in your mind Mr. Slagle, but that Hangover, Hao and Stratton Bald constitute the main mountain there?

A. Well I don't know what you would call the main mountain there. They are the highest points there.

Q. Have you ever seen the North Carolina act confirming the report of the commissioners?

A. No sir.

Q. Well now suppose it reads Mr. Slagle something like this: "Across Porter's Gap at the distance of 22 miles from the beginning, passing Meigs boundary line at 31½ miles, the Equeneetly path at 53 miles, and crossing the Tennessee River at the distance of 65 miles from the beginning, from Tennessee River to the main ridge, and along the extreme height of the same to the place where it is called "Unaca" or "Unaka Mountain." Would not you go when you left that river right straight up to the highest and biggest mountain, the Hangover, Hao and Stratton Bald?

A. It would depend on where you left the river. If you left the river below the mouth of Slick Rock creek you would not. If you left it above Slick Rock Creek, you follow in the ridge, you would go there.

Q. If following that line down the Smoky Mountain on the northeast side to where you reach that fore and aft tree on the
1118 bank or near the bank of the Little Tennessee River, if you crossed there you would go right on up Hangover ridge or lead, would not you?

A. You would not go up ridge at all if you crossed the river at that point. You would strike the face of the mountain.

Q. You mean then that right across the river from that fore and aft tree is a great bluff?

A. Yes sir.

Q. That rises up above the river several hundred feet?

A. Yes sir, it rises some distance above the river.

Q. Now didn't that fore and aft tree Mr. Slagle indicate that the boundary line run through it?

A. If it was marked for the line at all, it would indicate it.

Q. If before that block was cut out, it bore the fore and aft line marks, it would indicate that the line crossed the river right there?

A. It would indicate that it went through the tree.

Q. And crossed the river there?

A. Well yes, so far as I know yes.

Q. Now Mr. Slagle, Mr. Burns took you down to the mouth of Slick Rock Creek I believe you said?

A. We went down to the mouth of Slick Rock Creek.

Q. Now as I understood you to say down there just below the mouth of Slick Rock Creek, and near to the mouth of the creek and the river you say you found a pine stump?

A. Yes sir.

Q. How much of the stump was above the ground?

A. I should say three feet.

Q. Just standing there?

A. Yes sir.

Q. And the tree had been cut down or broken down, it had not blown up by the roots?

A. No sir, the one I saw had not.

Q. About how old was that tree Mr. Slagle.

A. I could not tell it was a very old stump, only the remains of the stump there. It's been down a great many years.

Q. Didn't find any marks on the stump?

A. Oh, no. There wasn't any part of the tree there to ascertain whether there had been any marks on it or not, not the one I saw.

Q. Now, then, referring to the Davenport Notes, I see that the first call in the 66th mile is "south 80 poles" up said creek. Now you do not mean to say that you actually ran on the ground those 80 poles?

1119 A. We didn't measure them. We set the compass at the mouth of the creek. We didn't measure any lines.

Q. Do you mean to say that the general course up the creek was south 80 west? You do not mean that do you Mr. Slagle?

A. I do not think this says south 80 poles west—you are correct—it is south 80 poles up said creek.

Q. Now you do not mean that the course of that creek up it is south?

A. From the mouth of the creek. Setting the compass south bears it right up the creek.

Q. Now that creek has been apparently right in its present location always?

A. It looks that way.

Q. Now since you did not make an actual survey as I understand it, you do not pretend to know just what it was? Now you examine these Davenport Field Notes and I will read to you Mr. Bruns' notes of an actual survey starting from the mouth of Slick Rock Creek, as they appear in his deposition given in this cause on or about the ——, 1911, and on the 50th page of said deposition, as follows: (Reads) "South 16 degrees, 28 min. E. 285 and .6 ft. south 11°, 7′, W. 365 ft. south 10°, 31′, E. 581 ft. South 30°, 35′, W. 375 ft." Now that number of feet so called for is all within 80 poles is not it?

A. I am not sure about that.

Q. All less than 80 poles is not it? How many feet in 80 poles?

A. 16½ feet in one pole.

Q. So there are about 1,300 feet in 80 poles?

A. Yes sir.

Q. Have you noticed those two first calls marked almost exactly due south? Well conceding that to be true, the next two calls:

"South 10°, 31', West," and "South 30°, 35', West," is not by any means a south course is it?

A. You go west of south by the number of degrees.

Q. You mean by the number of degrees that I read to you?

A. I do not know how far you would be west of south.

Q. Well in one instance you would be 10° and 31' west of south, and in the other instance you would be 30° and 35' west of south?

A. Yes sir.

Q. I will ask you to state Mr. Slagle, whether up the creek towards the end of the mile from the mouth, you saw the long straight place nearly 75 west, and another nearly 50 west, and did you see
1120 the straight place where looking up the creek for a considerable distance, the direction is due east?

A. I do not remember setting the compass at any place where it would be due east. The creek is very crooked as is the case with a great many of them. I do not remember any place where we set the compass due east.

Q. Is there any place up that creek within the first mile where that creek lies due east?

A. I do not recollect any such place. I do not remember setting the compass in any such place. I would not say one way or the other. Do not remember whether we did.

Q. Were you simply making a recon-oisance or observation survey along that route Mr. Slagle?

A. That was it.

Q. Now I believe you said that guessing, or approximating, about the distance of a mile up the creek from the mouth, your attention was called to a pine, a spruce pine? Did I understand you to say you saw any such tree there?

A. I did not see a spruce pine at the end of the distance. I was asked about a spruce pine that had been blocked, but I couldn't say how far it was from the river.

Q. You did not mean to say it was at the end of the first mile?

A. No sir.

Q. And the tree you have in mind was on the east bank of the creek and not on the west?

A. I think it was on the east bank of the creek is my recollection.

Q. Now up there on the Cheoyee Path, did you mean to say that you saw a birch up there that was marked?

A. Yes, sir. There was a birch there with some marks on it.

Q. But the marks you did not think were old enough to be state line marks?

A. I do not know whether they were or not. They were quite old marks, but they didn't show the line marks.

Q. Well the marks on a birch tree age rapidly, don't they Mr. Slagle?

A. Sometimes they do, some times they do not.

Q. Well now the fact is that both on the Blount County side, that is east of the river and up Slick Rock Creek you found a great many marks of various age, did not you?

A. Yes, up Slick Rock Cree- we did.

1121 And is not that tree with reference to the line on the north east side of the river?

A. Yes sir. There's different ages of marks on the north east side of the river.

Q. Some running back as much as sixty or seventy years?

A. Yes sir.

Q. From your observation, I say from your observation?

A. Yes sir.

Q. Because as I understand it Mr. Slagle you did not actually block any of these trees?

A. I did not block any of them. I counted some that were blocked, but did not block any of them.

Q. Now you said something about a maple up on the east bank of Slick Rock Creek, which I understood you to say was somewhere in the neighborhood of the end of the 4th mile from the river, but which did not have any marks on it?

A. The 69th mile tree, that — what you mean? I did not say it did not have any marks on it. I said the marks were too young to have been original ones.

Q. The sycamore trees that you found up there in an island in the river didn't have any marks at all on it?

A. Couldn't discover any.

Q. How big was that sycamore tree?

A. It was quite a large tree, something like three feet I should say in diameter.

Q. The sycamore is rather a rapid growth of tree is it not?

A. Sometimes they grow rapidly until they reach maturity, then they grow very slowly.

Q. That particular place was favorable to the growth of a sycamore tree?

A. Yes sir, near the water.

Q. Sycamore usually grow in low damp places and near the water?

A. Yes sir.

Q. And such conditions are most favorable to their growth?

A. Yes sir.

Q. You don't mean to say that if there had been any marks on that tree made in 1821, that they would have disappeared, do you?

A. They certainly would have disappeared. Sycamore sheds its bark very rapidly.

Q. Without leaving any kind of mark on the bark?

A. There would certainly be nothing outside to show. There might be inside, but certainly nothing outside to show.

Q. Well now, that birch up there at what you refer to as the end of the 70th mile. How big a birch was that?

1122 A. It was a very large crooked birch. I should say two feet and a half in diameter at least.

Q. Well that might be a hundred years old, might it, not?

A. It might. Might be less too, but I do not think it is any less. It had the appearance of being a very old tree.

Q. You didn't block it?

A. I did not.

A. Well now if it had been intended to use a sycamore tree on an island in the creek, situated like that big sycamore say that you have referred to supposedly as the end of the 68th mile, would not it have been a very natural thing, in fact the most natural thing for the man who made those notes, if he had been intending that as the 68th mile tree, to have referred to it as being on an island in the creek?

A. I am not at all sure that it was on an island at that time. It may have changed more than once since that.

Q. You do not know abou- that?

A. I do not.

Q. If it had been on a little island in the creek, the most natural thing for the surveyor to have done in order to localize and identify that tree would have been to have referred to it as being on an island in the creek, would not it?

A. I do not think that that would have been the case then, because they were not very careful to describe the places at that time. Now, they would.

Q. Well, it would have been just as natural to have set the sycamore on an island in the creek as it would have been to locate it on the bank of the creek?

A. If it had been an island at that time, it would.

Q. Mr. Slagle, the 6th call in Mr. Burns notes running from the mouth of Slick Rock Creek up the creek is: South 4°, 26½′, E. 704 ft, and then South 82°, 26½′, E. 385 ft. I wish you would point out to me any call in the Davenport Notes referring to that 66th mile that corresponds to these two calls that I have just read to you?

A. There is no call in the Davenport Notes that corresponds with those calls.

Q. Now, Mr. Slagle, turn back there to that 60th mile, which was the one first traversed by you and Burns on your
1123 recon-oisance. The first call in that mile as set out in the Davenport Notes is south 20, West 60 poles, is not it?

A. Yes sir.

Q. Now I believe you said that you took some sort of a sight there through the compass, and found that the general direction along that mountain ridge conformed to that call?

A. Not exactly to the call, but in the neighborhood of it.

Q. What do you mean?

A. I mean some few degrees from it, nor more than four or five degrees I do not think.

Q. Well now, if it is a matter of fact at the end of the first mile beginning at the 59th mile tree, as it stands on the ground, the first course by actual survey as made by S. S. Gannet witness for North Carolina in this cause, and set out in the exhibit to his deposition, and also in the deposition of D. B. Burns, taken in May 1911, on page 45, is south 2°, 26′ and 42″, West, there is a material variance between that call as found on the ground and the call in the Davenport Notes, is not it?

A. Yes sir.

Q. You say you went there without any preconceived ideas in regard to the location of that line Mr. Slagle?

A. Yes sir.

Q. Now what data did you have before you when you were considering that question there?

A. Down there we only had the Davenport Notes.

Q. Mr. Burns, of course told you all about the surveys that he had made down there?

A. Told me about the distance, yes.

Q. Told you about his ideas as to how they coincided from one point to another, and then ran around the mountain to measure the distance?

A. I do not remember what he said about it. We talked about the probability of them doing that.

Q. Now I believe you told Mr. Sondley in your examination — chief, that up there at that old birch, which you have described, and which is claimed by Burns to be the 70th mile tree, that you found one tolerably plain mark on it, and another that wasn't nearly so plain, and then you couldn't be sure of whether there was a third mark there or not?

A. Yes sir.

1124 Q. And so you couldn't say that there were three marks on that tree?

A. No sir, I would not swear there was three marks on that tree, although it had the appearance of having been marked three times.

Q. Blocking of that tree would have determined it?

A. It might or might not. If the bark had been cut through when it was marked, it would have determined it.

Q. Now I believe you told Mr. Sondley that you went up the ridge toward Fodder Stack from this birch, and then he called your attention to the last call in the 72nd mile, which is for 30 west 80 poles, white oak, 72nd mile, on a ridge between the aforesaid creek and Citico and did I understand you to say to him that you cited that call?

A. I cited from the top of the Fodder stack down the ridge.

Q. Not that call though, did you Mr. Slagle?

A. Yes sir.

Q. Are you quite sure of that?

A. It is my recollection.

Q. Is not it possible that you may have cited south 30 east.

A. My recollection is it was South 30 west, as this call is here.

Q. Then if that is so, you *went* down off the top of the ridge to a point on this side of the Citico Creek, didn't you?

A. No we went along the top of the ridge.

Q. Then you didn't *cite* South 30 west?

A. My recollection is the ridge runs south 30 west.

Q. Well now you didn't see anything there that would lead you to believe that that call had put South 30 East instead of south 30 west, did you?

A. I did not see anything here.

Q. Mr. Slagle you have done a good deal of mapping have not you, of your work*d* as a surveyor?

A. I have done considerable.

Q. You have examined a great many maps made by other men of their work as surveyors, haven't you?

A. Yes sir.

Q. Have you ever seen the original or a copy of the map of 1821, showing the outline of the boundary line between the states, which has been referred to a number of times in this litigation?

A. I suppose I saw it, a few minutes in Burns' office when I was here.

Q. You never saw the original?

A. No sir.

1125 Q. And that you saw in Burns' office was doubtless a copy?

A. I think he told me it was.

Q. He told you it was a copy? (shows witness a map) Was the copy which Burns showed you in his office something like a blue print copy of the map of 1821, which I now lay before you? (It is agreed by Counsel for both parties that the blue print shown to witness Slagle is a blue print copy of the map of 1821) Now then I call your attention to this line south of the river, the Tennessee River, as shown on this map, and as it is indicated here by etching, it appears to be on a mountain does it not Mr. Slagle?

A. It does after it leaves the creek. (Witness examines the map).

Q. Well say for about a mile and a quarter it is close to the creek, then after that it appears to be on top of the mountain, don't it?

A. I suppose that's what that means.

Q. That's what that sort of etching usually means, does it not Mr. Slagle?

A. I never saw one just like that.

Q. Now we will take this first circle south west of the river as the 66th mile, and the second one as the 67th mile, and the third one as the 68th mile, and the fourth on as the 69th mile, as shown on this map. That 69th mile circle appears to be up on the mountain, don't it?

A. Yes sir. Please let me see the scale (looks at scale).

Q. That's correct is it not?

A. Yes sir.

Q. Now it is conceded by all parties that these little circles along here indicate mile circles or rather are intended to represent mile circles. Then that 69th mile is not only on top of a mountain but it is not on the east bank of that stream there that's marked a creek, is it?

A. It does not say so on this map.

Q. That's something like three miles west of that stream marked a creek is not it?

A. According to the scale of that map something like it.

Q. Now, Mr. Slagle take these Davenport Field Notes, calling various courses and distances after leaving the Tennessee River at the 65th mile, as you have it before you, and as you have read them

out here several times, it would be utterly impossible would
1126 not it to make this map of 1821 conform to those Field Notes? (Witness examines map with the Davenport Field Notes) comparing them).

Q. I say that if this stream on this map just south of the Tennessee River, and marked a creek was intended to be Slick Rock Creek, this line showing the boundary line between the states did not conform to the courses set out in the Davenport Field Notes, does it? (Witness still examines notes and map).

Q. You seem to have some difficulty in coming to a conclusion. Let me be more specific. The 69th mile circle instead of being as shown on the map on the east side of that stream marked a creek, is several miles west of it, and the 70th mile circle or tree as called for in the Davenport Notes on the west bank of the creek, is, as shown by this map, to be several miles west of the stream marked a creek is not it?

A. Yes sir.

Q. And both of those points instead of being on a creek, are on the mountain ridge, aren't they both, the 69th and the 70th mile circle according to the map?

A. Yes sir. This map don't conform with the contention of North Carolina or Tennessee either, at all.

Q. Now what you have just told me—why did you volunteer this information?

A. Because you asked me about the map.

Q. All right, let's see. The Tennessee contention from the river south west is on a mountain ridge, is not it?

A. I think so sir.

Q. And this boundary line as shown on the map south west from the Tennessee River for the first mile and a quarter is close to a stream, then it is on top of a ridge all the balance of the way, is not it?

A. I do not think so, that don't appear to be on top of a ridge. This does start off with a stream. (puts finger down)

Q. What do you mean by that?

A. I mean that the line as shown on this map where it leaves the Tennessee River appears to start up a stream.

Q. You mean up or close to a stream?

A. I mean it goes up a stream.

Q. Then what?

A. Then leaves it and runs west.

Q. Then leaves it and runs southwesterly on a mountain ridge, does not it?

A. It appears so.

1127 Q. You put your finger down on a spot a while ago and said "that" wasn't on the mountain. What point did you mean by "That"? Do you mean the point where I have my pencil now?

A. Yes sir.

Q. Well now, what mile circle is that as shown on the map?

A. This being the 66th, 67th, 68th, 69th, 70th, 71st, 72nd.

Q. Then according to your idea the 72nd mile circle as shown on this map of 1821 is not on a mountain at all, is that it?

A. If this is the mountain top here (pointing)

Q. So according to your construction of this map of 1821, this 72nd mile circle don't appear to you to be on a mountain at all, is that right?

A. I do not know whether it was intended to show that as on a knob, and this the main ridge, or whether it was intended for that to be entirely west of it.

Q. Well, I told you Mr. Slagle if you had had these notes before you, and intended to draw a map to conform to these notes from the 65th mile circ*el* or tree south west, you would not have drawn it anything like this map, would you? (Witness examines map then Field Notes carefully)

A. The general bearings of it would be like this map.

Q. What point did you mean when you said this point here?

A. The 72nd.

Q. But Mr. Slagle, observing the courses and the calls of these Davenport notes, particularly in the 69th and 70th miles at the end of the 69th mile, a maple on the east bank of said creek and at the end of the 70th mile, a birch on the west bank of said creek. This map don't conform to those calls at all does it?

A. It lies in a south west direction.

Q. Mr. Slagle if you had been drawing a map from those calls would you have put the 69th mile circle on the two miles and a half or three miles west of the creek, when the notes bear you south on the east bank of the creek?

A. I certainly would not.

Q. Then they don't conform, the map and these field notes?

A. Not with regard to the creek, they don't.

Q. Well, all you mean to say is the general direction is south west?

A. Yes sir.

1128 Q. But they don't conform to the creek at all?

A. No sir.

Q. Now you are pretty familiar with the Cheoyee River, aren't you?

A. I have been on the Cheoyee River.

Q. And you crossed over this Hangover Ridge down to Cheoyee River when you were down there making this *reconoisant* survey with Mr. Burns?

A. Yes sir.

Q. Now is we assume that this 69th mile circle as shown on this map of 1821 is up there on the Hangover Ridge, it is just at that point, actually on the ridge, it is just about as far west of Cheoyee River as it appears to be west of this stream marked a creek on this map, according to the scale of the map, is not that correct?

A. No sir, it is farther to the river from any point of that ridge than it appears to be on this map.

Q. Well say from this 69th mile circle to this stream marked a creek, it is three miles according to the scale of this map? It's not further than three miles from the Hangover Ridge at a distance of

four miles from the river, to Cheoyee River, than three mile- is it?

A. It is the way the path goes. I don't know what the direct line would be.

Q. Well of course the map would show a direct line would not it?

A. Yes sir.

Q. I believe you said you had never been down on Tallecoa River?

A. No sir. I have never been down there.

Q. And you have never been down there where the line crosses due south and crosses the Hiawassee River and down to the Georgia line, have you?

A. No, I have never been there.

Q. How long were you down there with Mr. Burns this trip Mr. Slagle?

A. We were there four days.

Q. And parts of those four days were taken up in going back and forth to your boarding places and crossing that mountain?

A. Yes sir.

Q. Mr. Slagle, that gorge up Slick Rock Creek is just as rough territory as you ever went through?

A. It is pretty rough.

Q. Mr. Slagle did you know James K. Wilson, a Blount County surveyor, who died a number of years ago?

A. I met him only once.

1129 Q. Where did you meet him?

A. At my house.

Q. Was that over in Macon County?

A. Yes sir.

Q. Then you didn't know his work as a surveyor?

A. I didn't know anything about him.

Q. I thought possibly you had known him, as a good many North Carolina surveyors did know his work pretty well. Do you know W. D. Hale?

A. No sir.

Q. A Monroe county surveyor formerly?

A. No sir.

Q. Previous to meeting him today, did you know Mr. Williams, a surveyor of Polk County?

A. No sir.

Mr. CATES: Well I believe that's all.

Redirect examination by Mr. BICKETT, Att'y Gen'l for N. C.:

Mr. BICKETT: Mr. Slagle, would it be your opinion that these streams and these mountains (pointing to map) that appear here were made as the result of the actual measurement of the lines, or they were just sketched in generally after a survey was made?

A. I would take it that they were sjetched in.

Q. Now do I, or do I not understand you to say that the calls in the Davenport Field Notes conform generally to the meanderings of the creek that you found leaving the 65th mile tree?

A. Following the creek, sir, called for in the Davenport Field Notes.

Q. Do the notes up to the 69th mile point follow generally the course of that stream?

A. Yes sir.

Q. Now coming down to the river on the north east side, you said that there were no natural objects called for except some trees? I wish you would examine the notes and see if it calls for any path or low gap.

A. From the 60th mile tree there are no natural objects called for except trees—after leaving the 60th mile tree, at the 60th mile tree it calls for a path.

Q. Would that be what you would call a natural object in surveying?

A. It is what is called for in these notes. I think in that place it would be a natural object, as a path, a low gap.

Q. And that was where you started?

A. Yes sir.

Q. Now as you came down to the river from the top along the ridge of Smoky Mountain, could you see Fodder Stack?

A. Yes sir.

Q. From different points?

1130 A. Yes sir. Saw Fodder Stack from a great many places along the top of Smoky Mountain.

Q. It is a very bald, prominent mountain along there, is it not?

A. Yes sir.

Q. Well the main ridge would be where the lead comes up to what we call the Junction would not it? Would not that be the main ridge?

A. Yes sir.

Q. Well any explanation you can give about that territory, as to why you would call that the main ridge?

A. There's a high ridge that leads from little Fodder Stack and I do not know how much further north by Big Fodder Stack and up to the Junction, just as one leads on the other, said leads up between Bear Creek and Slick Rock Creek, and when you reach the Junction, then you would say you were on the main ridge—there's two mountains make a ridge there and goes one ridge from there, when you come down to the river to this fore and aft tree.

Q. How far up on the river bank was that fore and aft tree?

A. I should say from my recollection that it was about two or three hundred feet.

Recross-examination by Mr. CATES, Att'y Gen'l for Tenn.:

Mr. CATES: In response to a question from Attorney General Bickett, Mr. Slagle, you said that this stream (pointing to map) marking the creek just south of the Little Tennessee River as it is shown on this map of 1821 appeared to you to be just sketched in?

A. I said all these streams appear to be just sketched in.

Q. Including this stream that is marked a creek just south of the river after it leaves the line?

A. It appears to be just sketched in as all these streams are.

Q. Now then if it was intended to be marked, and marking the

line five miles up that stream, and they had an actual survey of it, there was no reason on earth for sketching in that stream was there—that part of the stream?

A. None that I can see.

Q. Now you were asked if there was not a low gap over there where you and Burns assumed the 60th mile tree to be. I will ask you if—is not a fact Mr. Slagle that there is also a low gap where
1131 the turnpike road crosses the mountain, is not there? That is, where the turnpike road crosses the boundary line?

A. There is something of a gap there. It is not as well defined a gap, and not as low a gap as the other. There's also a gap still further east.

Q. Now you were asked by General Bickett a rather leading question about if you didn't consider the junction point down there to be the main mountain, and you gave an explanation which it is not necessary to repeat. Did you refer to the lead or the ridge running up to Little Fodder Stack to Big *Big* Fodder stack and thence to Junction? And you also referred to a ridge or lead which runs from the river by way of Hangover and Hao and *Starttan* Bald, and you referred to it as being between the waters of Bear Creek and Slick Rock Creek? Now that's the biggest lead or ridge is it not?

A. I do not think so.

Q. Is not Hangover and Hao and Strattan Bald?

A. After you get to Hangover, it is the biggest ridge, but it is the lower ridge when you are down three miles north east of the river, than the other.

Q. You were never on the Little Fodder Stack ridge three miles from the river, were you?

A. I wasn't three miles from the river, but I was near Little Fodder Stack on the ridge between Little Fodder Stack and Big Fodder Stack, and on the road there to the Strattan Bald.

Q. Now there is no question but that when you do go to Hangover, that's much higher than either the Big Fodder Stack or the Little Fodder Stack ridges?

A. The ridge from Strattan Bald to Hangover is higher than these ridges there.

Q. When you drop off the Hangover, you drop down into the low laurel country where the ridge is quite a low flat ridge? In other words between the little Hangover and the Tennessee River there is a little gap?

A. It is not as well defined ridge as the other.

Q. As you go west from Strattan Bald, you would not know where the Fodder Stack Ridge joined on to the main mountain if somebody hadn't pointed it out to you, would you?

1132 A. I never went that way. There is no trouble in going the other way following the ridge.

Q. That big Fodder Stack ridge is eight or nine hundred feet between Hao, Strattan Bald and the main mountain?

A. I know there's a considerable drop, but I do not think there is as much a drop as east, the other way, should have.

UNITED STATES OF AMERICA,
Western District of North Carolina, at Asheville:

May F. Jones, being duly sworn says—I am the stenographer who by consent of both parties to the hereinbefore entitled cause between the State of North Carolina and the State of Tennessee, took down in short hand and trans-ribed on the typewriter the testimony of the witnesses duly given at the place and times hereinbefore mentioned in said cause whose names are hereinbefore respect*fully* given and the foregoing is a true full and correct transcript of the testimony of said witnesses so given respectively in said cause at said place and times and so taken down and transcribed by me.

MAY F. JONES.

Sworn to and subscribed before me this day, Witness my hand and official seal at Asheville, North Carolina, this 18th day of January, A. D. 1912.

J. M. MILLIKAN,
Clerk U. S. District Court.
By W. S. HYAMS,
Deputy Clerk.

[SEAL.]

In the District Court of the United States for the Western District of North Carolina, at Asheville.

I, W. S. Hyams, at present, Deputy Clerk of the United States District Court, formerly Clerk of the United States Circuit Court, for the Western District of North Carolina, at Asheville; and Commissioner selected by the parties, do certify that the foregoing, is the testimony and all of the testimony, of D. B. Burns, and C. L. Slagle, taken before me as such Commissioner, in the case of North Carolina vs. Tennessee, now pending in the Supreme Court of the United States.

This January 24, A. D. 1912.

[SEAL.] W. S. HYAMS, *Commissioner.*

Commissioner's fee $10.00.

123.

1133 The plaintiff now gives notice of the portions of the testimony in the case of Hebard v. Belding in the original case now pending in the said Sixth Circuit of the United States Court which it desires to use as evidence under the stipulations hereinbefore made and filed in this case, said notice being in the following words and figures, to-wit:

In the Supreme Court of the United States.

Original No. —. In Equity.

STATE OF NORTH CAROLINA, Complainant,
against
STATE OF TENNESSEE, Defendant.

Notice.

To the Honorable Charles T. Cates, Attorney General of the State of Tennessee, representing the defendant herein:

In accordance with the stipulation entered into between the Attorneys General of the Complainant and Defendant, respectively, in this case, whereby it was stipulated that the respective parties hereto might introduce in evidence herein, such testimony as was introduced in the case of Charles Hebard, Plaintiff, against D. W. Belding, M. M. Belding, A. N. Belding, Henry Stix, Nathan Stix, Louis Krohn, D. W. Hynan, Mary Bragg, R. L. Cooper, J. W. Cooper, and R. N. Archer, Defendants, which suit was prosecuted in the Circuit Court of the United States, in and for the Northern Division of the Eastern District of Tennessee, and as between those parties involved the location of the state line between the states of North Carolina and Tennessee.

The plaintiffs now herein designate the following testimony and evidence contained in the original record of said case of Hebard against Belding, and others, under said stipulation, as the evidence that will be offered from said record in this cause, to-wit:

No. 1. The depositions of H. S. Hayes and J. C. M. Bogle, commencing on page 130 of the original record of the said case of Hebard against Belding, and others, as printed and filed
1134 in the United States Circuit Court of Appeals at Cincinnati, and ending on page 168 of said record.

No. 2. The depositions of Dave Orr, H. P. Hyde, Reuben Carver, J. S. Maroney, Samuel Henry, Dr. J. W. Patton, and Samuel Sneed, commencing on page 183, and ending on page 205, of said original record in the case of Hebard against Belding, and others, printed and filed in the Circuit Court of Appeals at Cincinnati.

No. 3. The stipulation in said Hebard against Belding, and others, printed in said original record in the Circuit Court of Appeals at Cincinnati, on pages 226 and 227.

No. 4. The depositions retaken of H. P. Hyde and Reuben Carver, in said case of Hebard against Belding, and others, taken from the said original record printed and filed in the Circuit Court of Appeals at Cincinnati, commencing on page 227, and ending on page 276 of said record, including exhibits 7, 8, 11 and 13, of said record already mentioned.

No. 5. The deposition of Reuben Carver, commencing on page — included in the next above.

No. 6. The deposition of Edward T. Sanford, commencing on

page 336 and ending on page 336 of said printed record filed in the Circuit Court of Appeals at Cincinnati, with the exhibits thereto attached.

No. 7. The depositions of James McDaniel, M. L. Brittain, John Dockery, James Whittaker, W. P. Phillips, W. P. Jones, and C. C. Jones, commencing on page 358 and ending on page 378 of the original printed record in said case of Hebard against Belding, and others, and filed in the Circuit Court of Appeals at Cincinnati.

No. 8. The stipulation contained on pages 382 of said record in Hebard against Belding, and others, already mentioned as filed in the Circuit Court of Appeals in Cincinnati.

No. 9. The deposition of R. B. Mashburn, contained in the same printed record already mentioned, commencing on page 406, and ending on page 419, of said record, with the exhibits A. and B. on page 419, of said record, and attached as exhibits to said deposition.

No. 10. The stipulation in said case of Hebard against Belding, and others, contained on page 439 and 443, inclusive of said record in the Circuit Court of Appeals at Cincinnati, already men-
1135 tioned, consisting of the fifth paragraph thereof, and the sub-paragraph- lettered from A. to V. inclusive.

No. 11. The copy of a certain indenture made July 16th, 1853, between H. A. White, of Knoxville, Tennessee, and William Goodrick, of Philadelphia, Pennsylvania, commencing on page 457, and ending on page 459 of said printed record in the case of Hebard against Belding, and others, filed in the Circuit Court of Appeals in Cincinnati.

No. 12. So much of the land survey of the Ocoee land district in the state of Tennessee, as will show the eastern boundary line thereof, and the fractional sections thereon, as recorded in what was known as the Ocoee land district, including Monroe County, Tennessee.

Given this 9th day of July 1910, at Asheville, while taking testimony for the Complainant before the Examiner Edmund B. Norvell. Norvell.

T. W. BICKETT,
Att'y Gen'l of N. C.,
By THEO. F. DAVIDSON,
Associate Att'y.

T. E. H. McCroskey, Attorney-at-law, representing the Attorney General of Tennessee, at the present time, accepts a copy of said notice for the Attorney General, of the State of Tennessee, but does not admit that the complainant, the State of North Carolina, has a right to introduce other evidence than that of the witnesses in the case of Hebard v. Belding, and leaves the question open as to whether the Attorney General for the State of Tennessee will consent to the other matters therein mentioned being admitted.

The plaintiff now gives notice to the defendant that it will on the first day of the next term of the Supreme Court of the United States, in the Hall of the said Court, move for an order in this cause, directing the defendant to produce upon the hearing of the said cause in said Court, the original of the plat or map, now in its possession, of the survey of the boundary line between the said states

by the Commissioners appointed by the respective states for that purpose, under the Act of the General Assemblies of the said
1136 states in the years 1819-1820, said surveys having been made in the year 1821.

The further taking of testimony in this cause is continued until the 15th day of July, 1910, 10 A. M., at Asheville, North Carolina.

EDMUND B. NORVELL,
Notary Public & Commissioner.

1137 In the United States Circuit Court, at Knoxville.

CHARLES HEBARD
vs.
D. W. BELDING et al.

In this cause to save costs, it is mutually agreed and stipulated as follows:

1. That prior to the year 1836 the title of the Cherokee Indians had not been extinguished to all that portion of the state of Tennessee lying east and south of the following described line: Beginning at the intersection of the Tennessee River with the southern boundary of the state; thence up the Tennesee River to the Hiwassee River to a ridge; thence northeastwardly west of the land in dispute partly with said ridge striking the Little Tennessee River, with other lands not material to this controversy.

2. That on May 23d, 1836, the Cherokee Indians ceded to the United States all of the above mentioned portions of the present states of Tennesee and North Carolina.

3. That by Chapter 2 of the Acts of Tennessee of 1836, passed Oct. 18th, 1836, and entitled "An Act to provide for the survey of the lands ceded to the United States by the Cherokee Indians within the State of Tennessee, by treaty of the 23d day of May, 1836," all the said lands lying in the State of Tennessee were constituted a surveyor's district by name of Ocoee District, and it was provided for laying out of said District into townships, fractional townships, etc.

4. That by Chapter 2 of the Acts of Tennessee of 1837, passed Nov. 20th, 1837, and entitled "An Act to dispose of the land in the Ocoee District," provision was made for the entry and granting of the lands in the Ocoee District.

5. That North Carolina made provisions for a survey and sale of that portion of the ceded lands lying in North Carolina in the year 1837, but the act specifically provided that only lands which would bring more than 20 cents an acre should be surveyed and that no survey was made by North Carolina of the lands in disputed territory prior to 1851 and no North Carolina grants made in this region prior to that year.

6. That the maps marked "U. S. Geological Survey, J. W. Powell, Director," one being marked "North Carolina Nantahalah Sheet," and the other being marked "Tennessee-North Carolina Murphy

Sheet," are official maps published by the Department of the
1138 Interior of the United States Government of the lands embraced therein, and that the northwest corner of the first named sheet and the northeast corner of the second named sheet show the lands in controversy.

7. That the Little Tennessee River was formerly known as the Tennessee River.

8. It is agreed that this agreement may be used as evidence by either side, as evidence of the facts therein stated as if shown by competent proof but this agreement is not intended to waive the right of either party to except to any portion of such evidence on grounds of incompetency, immateriality or irrelevancy. This September 25th, 1897.

CHARLES HEBARD, *Comp'lt.*
By T. E. H. McCROSKEY, *Sol'r.*
Defendants D. W. BELDING ET AL.,
Except J. W. COOPER,
By LUCKY, SANFORD AND TYSON, *Sol'rs.*

(Endorsed:) 1056. Charles Hebard against D. W. Belding, et al. Stipulation. Filed Sept. 25, 1897. J. T. Carter, Dept. Clerk.

1139 In the United States Circuit Court, at Knoxville.

In Equity. No. —.

CHAS. HEBARD
vs.
D. W. BELDING et al.

In this cause it is admitted by the complainant in open court before the hearing of the cause before T. A. Wright, Esq., Special Commissioner: (1) That the defendants and those through whom they claim have paid continuously since 1860, taxes in North Carolina on the lands embraced in North Carolina grant No. 2336, dated December 19, 1860, to L. W. Gilbert and W. H. Peet, filed as exhibit H to the deposition of H. S. Hayes.

(2) That the main ridge of the mountain dividing Tennessee and North Carolina, does not begin to be called Unaka, Unacay or Unicoi Mountain until it reaches a point about fifteen (15) miles southwest of the junction of Hangover and Fodder Stack leads.

(3) That this agreement may be admitted in evidence on the hearing of this cause before the special commissioner and before the court with the same effect as if the facts herein admitted
1140 were testified to in properly taken depositions, subject only to exceptions as to incompetency and relevancy.

This June 23rd, 1898.

CHAS. HEBARD,
By McCROSKEY & McCROSKEY, *Solicitors.*
D. W. BELDING ET AL.
Except J. W. COOPER AND
R. L. COOPER,
By LUCKY, SANFORD & TYSON, *Solicitors.*

(Endorsed:) No. 1056. In the U. S. Circuit Court at Knoxville. Chas. Hebard against D. W. Belding, et al. Stipulation. Filed Aug. 6, 1898. J. T. Carter, Deputy Clerk.

1141 EXHIBIT NO. 7 TO DEPOSITION OF H. P. HYDE.

An Act to Locate the Line Between this State and Tennessee.

The General Assembly of North Carolina do enact:

SECTION 1. That the county surveyors of Graham and Cherokee counties be and they are hereby authorized, appointed and fully empowered to survey and locate the boundary line between said counties and the state of Tennessee, to the top of the Tennessee Bald Mountain. They shall run said line according to the calls set out in the Act of the General Assembly of North Carolina at its session of one thousand eight hundred and twenty-one (1821), being chapter forty-one (XLI) of said Acts, and entitled "An act to confirm the boundary line between this state and the state of Tennessee and for other purposes." The said surveyors shall follow the calls contained in said chapter, and mark and distinctly locate said line, and hereafter in all the courts of this state, and for every purpose whatever, the line so located and marked by said surveyors shall be the true line between North Carolina and Tennessee.

SECTION 2. The said surveyors may employ such assistance as they may need.

SECTION 3. The auditor of the state is hereby authorized
1142 to draw his warrant on the treasurer of the state for three hundred dollars (300.00) in favor of said county surveyors for locating said line, and out of same they shall pay all expenses of the survey, and establishing said line, and the treasurer shall pay said warrant: Provided said warrant shall not be drawn until a copy of said survey, with the calls distinctly set forth, be transmitted to the secretary of state, signed officially, by said surveyors. The secretary of state shall file said survey in his office for future use.

SECTION 4. In all indictments and proceedings in the courts of this state for every and all purposes whatsoever, the lines so located by the said surveyors shall be recognized as the true line between this state and Tennessee.

SECTION 5. All laws and clauses of laws in conflict with this act are hereby repealed.

SECTION 6. This act shall be in force from and after its ratification.

In the General Assembly read three times and ratified this 1 day of March, 1897.

A. T. HILEMAN,
Speaker of the House of Representatives.
C. A. REYNOLDS,
President of the Senate.

[Great Seal of the State of North Carolina. May 20, 1775. Esse Quam Videri.]

STATE OF NORTH CAROLINA,
OFFICE OF SECRETARY OF STATE,
RALEIGH, *September 23rd*, 1897.

I, Cyrus Thompson, secretary of state of the state of North Carolina, do hereby certify the foregoing two (2) sheets to be a true copy from the records of this office.

Done in office at Raleigh this 23rd day of September, 1897.

[State of North Carolina. May 20, 1775. Department of State. Esse Quam Videri.]

CYRUS THOMPSON,
Secretary of State.

Endorsed: Filed Sep. 30, 1897. J. T. Carter, dep. clerk.

1143 EXHIBIT NO. 8 TO DEPOSITION OF H. P. HYDE.

NORTH CAROLINA,
Graham County:

To the Honorable Secretary of State:

Pursuant to an act of the General Assembly for the year 1897, entitled "An Act to locate the line between North Carolina and Tennessee"—

We, H. P. Hyde, county surveyor of Graham county, and F. M. Lovingood, county surveyor of Cherokee county, have surveyed and located the boundary line between said counties in the state of North Carolina and the state of Tennessee according to the calls set out in Chapter Forty-one (XLI), Laws of 1821, and have distinctly located and marked said line from the south bank of the Tennessee river, at the point where the line set out in said Chapter Forty-one (XLI), Acts of 1821, crosses said river, and at the mouth of Slick Rock creek, and runs thence up said creek to the lower point of the Big Fodder Stack Lead, being five miles, one hundred and one poles from Tennessee river. Thence up said Lead to the top of the Big Fodder Stack. Thence up the divide between Slick Rock creek in North Carolina and Citico creek in Tennessee, with the heights and peaks thereof passing Rock Stack Knob and continuing to a point on said divide where it connects with a lead running from Hawk Knob to the Bob Stratton Bald, and about one (2) half mile south west of said Bald at which a stone is set up, marked "N. C. 10 M." and is situate on the divide between the head waters of Slick Rock and Santeetla creeks in North Carolina and Citico creek in Tennessee. Thence with the divide leading from the Bob Stratton Bald through the John Stratton Meadows to the Haw Knob. Thence in a southwest direction with the divide to Laurel Knob to what is known as state line ridge. Thence down state line ridge to Tellico river, crossing said river, and thence up a ridge just opposite said state line ridge, in a south west direction, passing an old holly tree at forty poles from said river, marked on the west side "86 M."

and continuing to the top of the dividing ridge leading to the Tennessee or Beaver Dam Bald. Thence up said divide to the said Tennessee or Beaver Dam Bald, which Bald is on the Uneay or Unaka Mountain at which point on said Bald a stone is set up marked "N. C. 25 M. 1897"—whole distance from the beginning point at the Tennessee river, twenty-five miles and one hundred and eleven poles, and more particularly described as follows:

Beginning at a large rock on the south bank of Tennessee river on the west bank of Slick Rock creek, which said rock is marked on the east side "N. C. 65 M.";

1144 Thence running south up said creek as it meanders, 54 poles;

Then S. 6 E. 24 poles;
Then S. 20 W. 20 poles;
Then S. 57 W. 30 poles;
Then S. 42 poles;
Then S. 60 W. 40 poles;
Then S. 17 E. 40 poles;
Then S. 22 W. 14 poles;
Then N. 60 W. 44 poles;
Then S. 85 W. 80 poles;
Then S. 59 W. 24 poles;
Then S. 58 poles;
Then S. 80 W. 40 poles;
Then S. 13 E. 40 poles;
Then S. 48 poles;
Then S. 35 E. 18 poles;
Then S. 26 W. 14 poles;
Then N. 62 W., crossing Slick Rock Trail at 10 poles, whole distance 20 poles;
Then N. 84 W. 22 poles;
Then S. 24 W. 44 poles;
Then N. 80 W. 16 poles;
Then N. 50 W. 52 poles;
Then West 20 poles;
Then S. 30 W. 10 poles; to the mouth of Little Slick Rock creek;
Then S. 10 W. 28 poles;
Then S. 30 W. passing the mouth of Nichol's Cove Branch at 44 poles, whole distance 76 poles;
Then S. 15 W. 56 poles;
Then S. 58 W. 24 poles;
Then S. 68 W. 14 poles;
Then N. 70 W. 16 poles;
Then N. 55 W. 30 poles;
Then N. 85 W. 12 poles;
Then S. 50 W. 14 poles;
Then S. 35 W. 10 poles;
Then S. 27 E. 20 poles;
Then S. 73 W. 10 poles;
Then N. 77 W. 30 poles;
Then N. 17 W. 20 poles;

Then N. 55 W. 18 poles;
Then S. 65 W. 14 poles;
Then S. 23 W. 24 poles,
Then S. 38 poles;
1145 Then S. 50 W. crossing an old trail leading from Tennessee to Deputy Place at 18 poles, same course, whole distance 32 poles;
Then S. 32 poles;
Then S. 28 W. 20 poles;
Then N. 81 W. 20 poles;
Then S. 20 W. 24 poles;
Then S. 77 W. 10 poles;
Then N. 76 W. 28 poles;
Then S. 71 W. 12 poles;
Then S. 30 W. 16 poles;
Then S. 20 E. 8 poles;
Then S. 51 E. 26 poles;
Then S. 42 W. 24 poles;
Then S. 25 E. 8 poles;
Then N. 85 E. 12 poles;
Then S. 40 E. 8 poles;
Then S. 30 W. 16 poles;
Then S. 14 poles;
Then S. 37 W. 30 poles;
Then S. 10 E. 18 poles, passing falls in said creek;
Then S. 70 E. 8 poles;
Then S. 20 W. 14 poles;
Then S. 4 E. 14 poles;
Then S. 14 W. 34 poles;
Then S. 47 W. 26 poles;
Then S. 10 E. 14 poles to a spruce pine on the west side of said Slick Rock creek, marked on the east side "N. C. 5 M." it being 5 miles 101 poles from the mouth of said Slick Rock creek as it meanders, said pine tree being at the mouth of the first branch that heads north of Big Fodder Stack at the point of the ridge that leads to the said Big Fodder Stack;
Then with said ridge S. 11 W. 18 poles;
Then S. 5 E. 11 poles;
Then S. 32 W. 31 poles;
Then N. 65 W. up said ridge 14 poles;
Then N. 75 W. 14 poles;
Then S. 77 W. 14 poles;
Then S. 72 W. 22 poles;
Then S. 38 W. 8 poles;
Then S. 12 W. 26 poles;
Then S. 35 W. 13 poles;
Then S. 68 W. 12 poles;
Then S. 33 W. 14 poles;
Then S. 50 W. 20 poles;
Then S. 42 W. 16 poles;
1146 Then S. 60 W. 30 poles;
Then S. 38 W. 34 poles;

Then S. 60 W. 22 poles;
Then S. 7 W. 10 poles;
Then S. 32 W. 12 poles;
Then S. 25 W. 8 poles, to a rock marked on the east side "N. C. 6 M."
Then same course S. 25 W. 20 poles;
Then S. 35 W. 24 poles;
Then S. 60 W. 24 poles;
Then S. 50 W. 16 poles;
Then S. 77 W. 26 poles;
Then N. 82 W. 34 poles;
Then N. 59 W. 24 poles;
Then S. 80 W. 24 poles to a spruce pine or old fore and aft tree on the Big Fodder Stack Lead;
Then W. 16 poles;
Then S. 57 W. 22 poles to the top of the Big Fodder Stack;
Then S. 25 E. 16 poles;
Then S. 5 E. 24 poles;
Then S. 30 E. 50 poles to a rock marked "N. C. 7 M."
Then same course S. 30 E. 28 poles;
Then S. 14 W. 52 poles;
Then S. 40 E. 20 poles;
Then S. 30 E. 25 poles;
Then S. 7 E. 8 poles;
Then S. 28 E. 34 poles;
Then S. 34 E. 18 poles;
Then S. 58 E. 20 poles;
Then S. 80 E. 28 poles;
Then S. 60 E. 36 poles;
Then S. 30 E. 6 poles to the top of Rock Stack;
Then S. 25 W. 18 poles;
Then S. 58 E. 13 poles to a stone marked "N. C. 8 M."
Then S. 12 E. 80 poles;
Then S. 13 W. 12 poles to the Glen Cove Gap;
Then S. 10 poles;
Then S. 60 E. 12 poles;
Then S. 47 E. 10 poles;
Then N. 71 E. 24 poles;
Then S. 66 E. 52 poles;
Then S. 10 W. 12 poles;
Then S. 12 E. 6 poles;
Then S. 20 W. 20 poles;
Then S. 37 W. 26 poles;
Then S. 28 W. 32 poles;
Then S. 7 W. 10 poles;
Then S. 19 W. 4 poles to a stone marked "N. C. 9 M."
1147 Then same course S. 19 W. 28 poles;
Then S. 17 E. 20 poles;
Then S. 42 E. 10 poles;
Then S. 61 E. 4 poles;
Then S. 46 E. 24 poles;

Then S. 13 E. 10 poles;
Then S. 3 W. 16 poles;
Then S. 15 W. 8 poles;
Then S. 8 E. 8 poles;
Then S. 24 E. 62 poles;
Then S. 3 W. 18 poles;
Then S. 25 W. 20 poles;
Then S. 2 E. 16 poles;
Then S. 5 W. 14 poles;
Then S. 10 E. 26 poles;
Then S. 28 E. 14 poles;
Then S. 50 E. 18 poles;

Then S. 70 W. 4 poles to a stone marked "N. C. 10 M." about one-half mile S. W. of Bob Stratton Bald on the divide between the head waters of Slick Rock and Santeetla creeks in North Carolina and Citico creek in Tennessee;

Then S. 70 W. 6 poles;
Then S. 60 W. 12 poles;
S. 39 W. 16 poles;
Then S. 25 W. 18 poles;
Then S. 8 E. 14 poles;
Then S. 26 W. 10 poles;
Then S. 40 W. 20 poles;
Then S. 55 W. 12 poles;
Then S. 30 W. 10 poles;
Then S. 42 W. 60 poles;
Then S. 52 W. 26 poles;
Then S. 25 W. 48 poles;
Then S. 30 W. 20 poles;
Then S. 45 W. 12 poles;
Then S. 22 W. 16 poles;

Then S. 37 W. 20 poles to a stone marked "N. C. 11 M." same course S. 37 W. 20 poles;

Then S. 24 poles;
Then S. 30 W. 38 poles;
Then S. 60 W. 24 poles;
Then S. 87 W. 12 poles;
Then S. 44 W. 14 poles;
Then S. 25 W. 6 poles;
Then S. 2 W. 32 poles;
Then S. 73 W. 34 poles;
Then S. 82 W. 14 poles;
1148 Then S. 66 W. 28 poles;
Then N. 66 W. 14 poles;
Then N. 85 W. 12 poles;

Then S. 71 W. 48 poles to a large rock marked "N. C. 12 M., 1897."

Then S. 83 W. 13 poles;
Then S. 43 W. 14 poles;
Then S. 17 W. 18 poles;
Then S. 54 W. 20 poles;

Then S. 73 W. 52 poles;
Then S. 33 W. 30 poles;
Then S. 25 W. 14 poles;
Then S. 10 W. 21 poles;
Then S. 53 E. 20 poles;
Then S. 40 E. 50 poles;
Then S. 24 E. 20 poles;
Then S. 37 E. 16 poles; to a rock marked "N. C. 13. M."
Then same course, S. 37 E. 28 poles;
Then S. 41 W. 50 poles;
Then S. 10 E. 16 poles;
Then S. 45 W. 12 poles;
Then S. 52 poles;
Then S. 80 E. 18 poles;
Then S. 85 E. 24 poles;
Then [illegible]. 70 E. 10 poles;
Then S. 75 E. 36 poles;
Then S. 35 E passing through the gap of the John Stratton Meadows at 11 poles, same course, whole distance 29 poles;
Then S. 17 E. 30 poles;
Then S. 23 E. 15 poles; to a stone marked on East side "N. C. 14 M."
Then S. 28 E. 30 poles;
Then S. 32 W. 10 poles;
Then S. 14 W. 27 poles;
Then S. 39 W. 22 poles;
Then S. 45 W. 16 poles;
Then S. 22 W. 42 poles;
Then S. 62 poles;
Then S. 17 W. 30 poles;
Then S. 24 W. 58 poles;
Then S. 30 E. 13 poles to a stone marked on the East side "N. C. 15 M.
Then same course S. 30 E. 10 poles;
Then S. 25 W. 64 poles;
Then S. 16 W. 34 poles;
Then S. 6 E. 26 poles;
Then S. 3 W. 10 poles;
1149 Then S. 14 W. 20 poles;
Then S. 14 E. 32 poles;
Then S. 21 E. 12 poles;
Then S. 43 E. 20 poles;
Then S. 61 E. 16 poles;
Then S. 75 E. 46 poles;
Then E. 36 poles to a stone marked on the north side "N. C. 16 M."
Then same course E. 16 poles;
Then S. 64 E. 44 poles to Haw Knob;
Then S. 4 W. 12 poles;
Then S. 25 E. 16 poles;
Then S. 5 W. 16 poles;

Then S. 7 E. 26 poles;
Then S. 38 E. 8 poles;
Then S. 52 E. 28 poles;
Then S. 43 E. 20 poles;
Then S. 25 E. 44 poles;
Then S. 63 E. 46 poles;
Then S. 35 W. 16 poles;
Then S. 25 W. 12 poles;
Then S. 40 W. 16 poles to a stone marked "N. C. 17 M."
Then same course S. 40 W. 20 poles;
Then S. 17 W. 20 poles;
Then S. 4 poles;
Then S. 27 E. 18 poles;
Then S. 15 E. 8 poles to the top of Laurel Knob;
Then S. 30 W. 12 poles;
Then S. 40 W. 26 poles;
Then S. 45 W. 60 poles;
Then S. 67 W. 10 poles;
Then S. 50 W. 34 poles;
Then S. 60 W. 30 poles;
Then S. 50 W. 44 poles;
Then S. 65 W. 10 poles;
Then S. 50 W. 24 poles to a stone marked "N. C. 18 M."
Then S. 60 W. 8 poles;
Then S. 73 W. 12 poles;
Then S. 83 W. 8 poles;
Then S. 50 W. 16 poles;
Then S. 28 W. 34 poles;
Then S. 28 W. 34 poles;
Then S. 36 W. 46 poles;
Then S. 12 poles;
Then S. 30 W. 36 poles;
Then S. 15 W. 22 poles;
Then S. 28 poles;
Then S. 35 W. 10 poles;
1150 Then S. 45 W. 18 poles;
Then S. 55 W. 34 poles;
Then S. 32 W. 12 poles; to a stone marked "N. C. 19 M."
Then S. 45 W. 54 poles;
Then S. 27 W. 14 poles;
Then S. 45 W. 14 poles;
Then S. 15 W. 16 poles;
Then S. 70 W. 16 poles;
Then W. 12 poles;
Then S. 65 W. 14 poles;
Then S. 71 W. 12 poles;
Then N. 80 W. 12 poles;
Then S. 53 W. 12 poles;
Then S. 32 W. 8 poles;
Then S. 22 W. 10 poles;
Then S. 43 W. 22 poles;

Then S. 27 W. 14 poles;
Then S. 23 E. 16 poles;
Then S. 26 W. 14 poles;
Then S. 55 W. 36 poles;
Then S. 45 W. 24 poles to a stone marked "N. C. 20 M."
Then same course S. 45 W. 6 poles;
Then S. 75 W. 8 poles;
Then N. 80 W. 12 poles;
Then S. 62 W. 22 poles;
Then S. 45 W. 16 poles;
Then S. 78 W. 16 poles;
Then N. 72 W. 12 poles;
Then S. 68 W. 30 poles;
Then S. 86 W. 14 poles;
Then S. 81 W. 16 poles;
Then S. 74 W. 16 poles;
Then S. 60 W. 34 poles;
Then S. 45 W. 12 poles;
Then S. 60 W. 34 poles;
Then S. 73 W. 16 poles;
Then S. 65 W. 20 poles;
Then S. 77 W. 8 poles;
Then S. 57 W. 14 poles;
Then S. 83 W. 14 poles; to a rock marked on the south side "N. C. 21 M."
Then S. 65 W. 12 poles;
Then S. 35 W. 10 poles;
Then S. 87 W. 12 poles;
Then N. 72 W. 12 poles;
Then S. 70 W. 18 poles;
Then W. 8 poles;
Then S. 55 W. 16 poles;
1151 Then S. 67 W. 10 poles;
Then S. 42 W. 12 poles;
Then S. 77 W. 26 poles;
Then S. 64 W. 14 poles;
Then S. 60 W. 28 poles;
Then S. 50 W. crossing Telico river at 12 poles, whole distance 16 poles;
Then S. 30 W. 12 poles;
Then S. 40 W. 8 poles;
Then S. 32 W. 8 poles;
Then S. 48 W. 8 poles to a large holly tree with an old mark "86 M." on it;
Then S. 37 W. 26 poles;
Then S. 16 W. 8 poles;
Then S. 30 E. 28 poles;
Then S. 15 E. 20 poles;
Then S. 45 W. 8 poles marked "N. C. 22 M." same course S. 45 W. 14 poles;
Then S. 84 W. 16 poles;
Then S. 60 W. 10 poles;

Then S. 8 W. 12 poles;
Then S. 25 W. 12 poles;
Then S. 40 W. 15 poles;
Then S. 64 W. 10 poles;
Then S. 53 W. 20 poles;
Then S. 6 W. 18 poles;
Then S. 75 W. 34 poles;
Then S. 24 W. 20 poles;
Then W. 11 poles;
Then S. 78 W. 27 poles;
Then S. 40 W. 10 poles;
Then S. 29 W. 10 poles;
Then S. 46 W. 14 poles;
Then S. 68 W. 14 poles;
Then W. 10 poles;
Then S. 68 W. 24 poles;
Then W. 10 poles to a rock marked "N. C. 23 M."
Then same course W. 12 poles;
Then S. 53 W. 20 poles;
Then S. 65 W. 17 poles;
Then N. 64 W. 49 poles;
Then S. 72 W. 8 poles;
Then S. 81 W. 24 poles;
Then N. 57 W. 12 poles;
Then N. 42 W. 34 poles;
Then N. 65 W. 28 poles;
Then N. 45 W. 20 poles;
Then N. 60 W. 12 poles;
1152 Then S. 70 W. 14 poles;
Then S. 50 W. 42 poles;
Then S. 73 W. 14 poles;
Then N. 67 W. 14 poles to a stone marked "N. C. 24 M."
Then S. 57 W. 56 poles;
Then N. 82 W. 18 poles;
Then N. 43 W. 24 poles;
Then N. 30 W. 44 poles;
Then S. 42 W. 22 poles;
Then N. 60 W. 38 poles;
Then S. 52 W. 26 poles;
Then S. 25 W. 30 poles;
Then S. 70 W. 32 poles;
Then S. 85 W. 40 poles to a stone marked "N. C. 25 M. 1897." on the top of the Tennessee or Beaver Dam Bald, whole distance from beginning point at Tennessee river, twenty-five miles, one hundred and eleven poles.

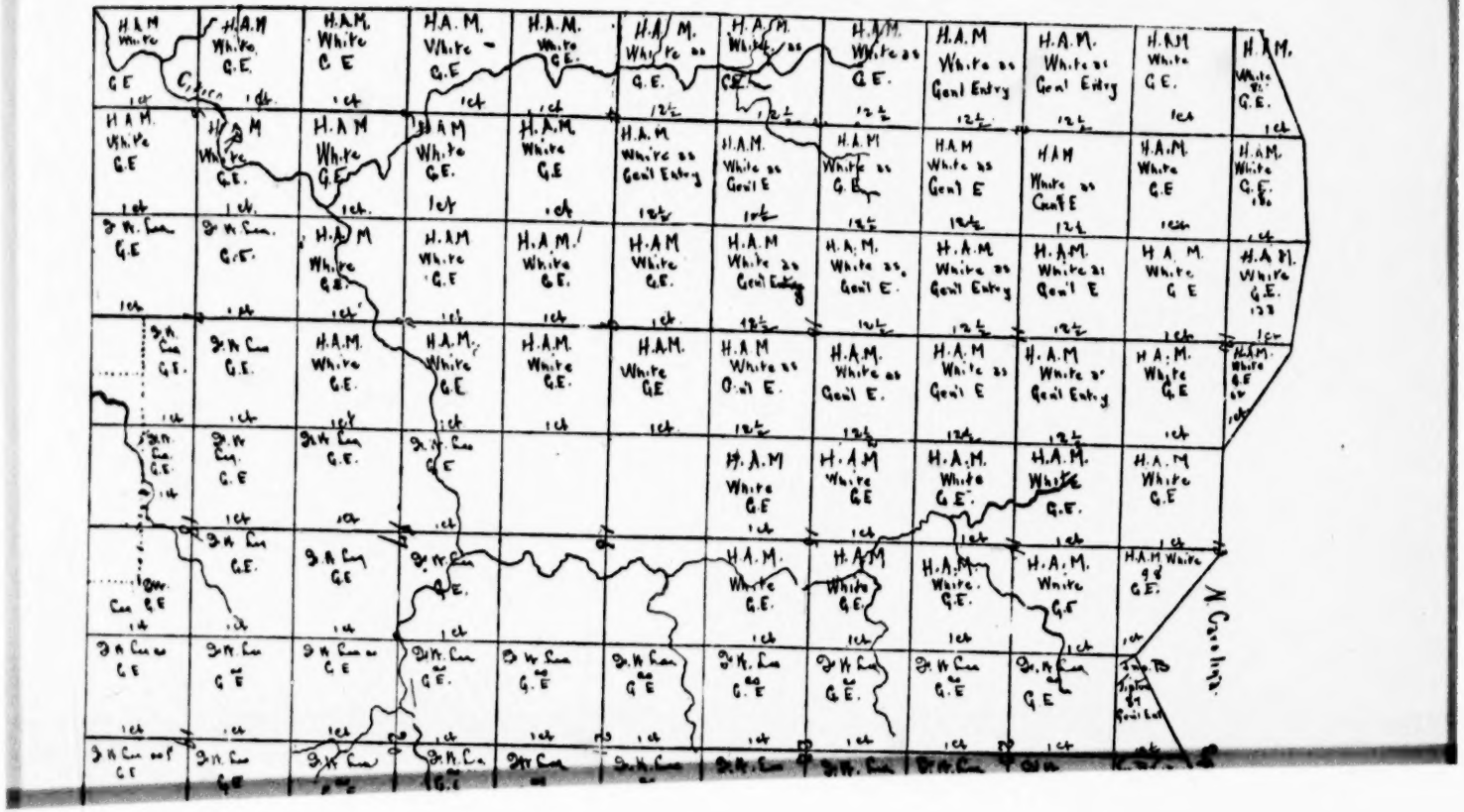
This May 19th, 1897.

H. P. HYDE,
Co. Sur. Graham Co., N. C.
F. M. LOVINGOOD,
Co. Sur. Cherokee Co., N. C.

O. P. WILLIAMS,
H. M. LOVINGOOD,
C. C.

Exhibit "E" to deposition Edward T. Sanford.

Filed Sept. 30, 1897. J. T. Carter, deputy clerk.


H.A.M White G.E.
H.A.M White as Coal Entry
H.A.M White as Coal E
H.A.M White as Coal
H.A.M White as Oil E
H.A.M White as Oil
H.A.M White as Gas E
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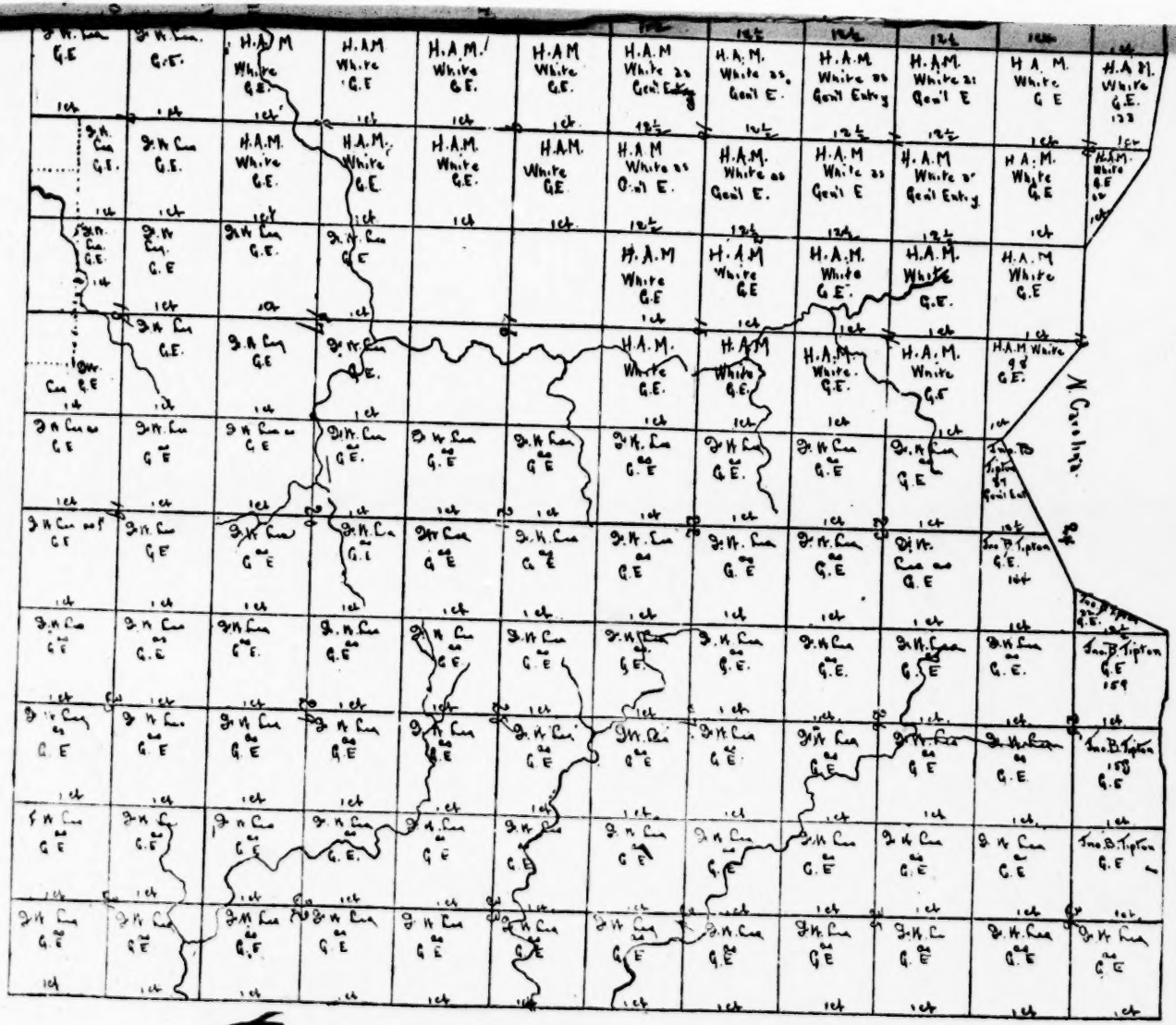


1155

I certify that the above is a true and correct copy of the original map of fractional township 1 South Range 6 East of the Basis line, Ocoee District, Tennessee, now in my office.

T. J. Knox,
Register & Entry Taker,
Ocoee Land Dist.

STATE OF NORTH CAROLINA,
OFFICE OF SECRETARY OF STATE.
RALEIGH, *Sept.* 23*rd*, 1897.

[The Great Seal of the State of North Carolina. May 20, 1775. Esse Quam Videri.]

I, Cyrus Thompson, secretary of state of the state of North Carolina, do hereby certify the foregoing ten (10) sheets to be a true copy from the records of this office.

Done in office at Raleigh this 23rd day of September, 1897.

[State of North Carolina. Department of State. May 20, 1775. Esse Quam Videri.]

CYRUS THOMPSON.
Secretary of State.

1153 Next witness, EDWARD T. SANFORD, of lawful age, being duly sworn, deposed as follows:

I am 33 years of age, live in Knoxville, Tenn., am practicing lawyer and a member of the firm of Lucky, Sanford & Tyson, solicitors in this case. Some months ago, when in Nashville, Tenn., I went personally to the office of the secretary of the state of Tennessee, to see if I could find the report of the Tennessee Commissioners who ran the state line between Tennessee and North Carolina in 1821 and their plat of same; I was informed by the secretary of state that there was no such report or map in his office and that the same had been lost, mislaid prior to his coming into office, in the confusion that had attended the preservation of papers in the office, probably during the war. I herewith file as Exhibit No. 1 to this deposition, certified copy of Range 6 E, Fractional Township 1, S of Ocoee District, Tennessee, being the fractional township, immediately south of fractional township, of which a certified
1154 copy of the map of which is filed as Exhibit A to deposition of T. E. H. McCroskey in this cause.

EDWARD T. SANFORD.

Subscribed and sworn to before me this 28 day of September, 1897.

[J. T. Carter, Eastern District of Tennessee, United States Commissioner.]

J. T. CARTER,
U. S. Com'r, Eastern District of Tennessee.

Cross-examination waived by solicitors for compl't.
Filed Sept. 30, 1897. J. T. Carter, deputy clerk.

(Here follows Exhibit "E" to deposition of Edward T. Sanford, map, marked page 1155.)

1156 And afterwards, to wit, on the 17th day of July, 1897, certain depositions of H. S. Hayes and J. C. M. Bogle were filed in the Clerk's office of said Court, which said depositions are clothed in the words and figures following, to wit:

In the United States Circuit Court, at Knoxville, Tennessee.

No. 1056. In Equity.

CHAS. HEBARD
vs.
D. W. BELDING et al.

The depositions of H. S. Hayes and J. C. M. Bogle, witnesses for all the defendants except J. W. Cooper in the above entitled cause, taken by consent, at the office of Lucky, Sanford & Tyson,
1157 Knoxville, Tennessee, in the presence of T. E. H. McCroskey, solicitor for complainant, and C. E. Lucky and Edw. T. Sanford, solicitors for all the defendants except J. W. Cooper.

The said witness, H. S. HAYES, being duly sworn, deposed as follows:

Examined by Mr. SANFORD:

Q. 1. State where you live?

A. At Murphy, N. C.

Q. 2. What is your occupation?

A. I am a surveyor.

Q. How old are you and how long have you been surveying?

A. 54 years of age. Have been following surveying as a business for twelve years.

Q. What has been your experience with reference to surveying mountain land?

A. I have had a great deal of experience in that. The greater portion of the work that I have done in the twelve years has been that.

Q. Have you been recently employed to make a survey of the lands involved in this dispute? If so, state by whom you have been employed, and what instructions were given you as to the object of your survey?

A. I was employed by the defendants in this case, Belding & Co. My instructions was to use all the energies I could to locate the state line. To get the state line in the region of dispute.

Q. Were you instructed to search along one line, or to search along all lines claimed, to get the true line?

A. To search along all lines claimed.

Q. When did you go and who went with you?

A. My recollection now is that I got there on the 16th of Feb. last, but I think we went to work on the 18th. Mr. Bogle was with me. Mr. J. C. M. Bogle, J. R. McClellan, R. Carver, John Hayes and Henry Ditmore were with me, also Sam Hughes.

Q. Which were the surveyors and which assistants?

A. Mr. Bogle and me were the surveyors, and the others assisted us.

Q. How long were you engaged in the work, and how carefully did you proceed?

A. We were there on the ground 17 days. We did all we knew to do. We traced up each of the lines there of Mr. Hale and Mr. Wilson and Muller.

Q. Did you have with you a blue print and also a tracing of the map filed as Exhibit "A" to the deposition of W. D. Hale in this case?

1158

A. I had a blue print and Mr. Bogle had a tracing.

(The blue print and tracing are here shown to counsel for the plaintiff.)

They are correct copies of the original map. I have both copies and the original before me.

Q. Did you have any notes of the depositions of Hale, Watson and Muller in this case?

A. I had the deposition of Mr. Wilson. Mr. Bogle had parts of the notes of Mr. Hale's deposition.

Q. Now, taking up the different lines in succession, please state what investigation you made along the line beginning at the Tennessee River and extending westwardly along the ridge shown on Hale's map as Slick Rock Ridge to determine whether there were any marked trees?

A. I examined that ridge closely for about two miles and a half from the river. Then up to the point Little Fodder Stack, I did not examine it, but from there to Big Stack I did examine it closely. I find no state line marks there, no old ones.

Q. Did you go north of the Little Tennessee at all, if not, why not?

A. No, sir; on account of high water.

Q. Did you trace the line shown on Hale's map as the Hangover Lead, or any part thereof? And if so, state whether you found any marked trees showing state line marks?

A. Yes, sir; I traced part of that from Slick Rock Gap down to near the river. And from what is called Big Fat Gap on Mr. Hale's map, to the junction of what is called Hangover and Fodder Stack Leads. I found nothing there that I think was state line marks.

Q. Did you examine the various trees referred to by Hale and Wilson, in the portion on which you went?

A. I examined the first black oak that they called for there, not located on their map, but called for in their deposition.

Q. Is that the black oak spoken of by Hale in answer to question 11 on direct, and described as being a black oak three-quarters of a mile from the river?

A. Yes, sir; that is the tree.

Q. Please describe the marks, if any, on this black oak, and state whether or not there were any state line marks on that black oak?

A. There was three hacks on the north side and three on the

southwest side, is my recollection. I made no notes on the hacks.

1159 Q. What would that indicate?

A. I took it to be a North Carolina corner, as it is marked as a North Carolina corner.

Q. What is the mark of a corner in North Carolina?

A. Three hacks on the side of the tree as you approach it, and three hacks on the side as you leave the tree in the direction you leave.

Q. Were the marks on the tree old enough to have been made in 1821?

A. I think not, sir.

Q. What is the mark of the State Line, as run by the commission in 1821?

A. A blaze with two hacks over it, on fore and aft trees, and three chops on side lines.

Q. Was this tree marked in either of said ways?

A. No, sir, I think not.

Q. Did you examine the double sourwood referred to by Hale in the same answer, and described as a double sourwood in a gap, one mile from the river?

A. Yes, sir; I examined it, but took no notes of the hacks on it. There was too many hacks on it for a corner tree or a state line tree, and too close together. It looks as though some person had just been hacking with an axe for no particular purpose.

Q. Were the marks old enough to have been made in 1821?

A. I think not. I think one or two of the cuts looked new.

Q. Did it have any marks showing that it was a state line tree, either fore and aft or side line?

A. I think not.

Q. From the Big Flat to the junction of the Hangover Lead and the Fodder Stack Lead did you examine for state line trees, and did you find any trees showing such marks?

A. Yes, sir; I examined it, found none.

Q. I call your attention to the point on Hale's map marked "Hao" on the Hangover Lead. Please state whether from that point the main lead of the Hangover runs to Little Tennessee as shown on his map? If not, which way does the main lead of Hangover run from that point?

A. The main lead from that point runs off northeast and goes to Cheoah River. The one shown on Hale's map I do not think is the main lead.

Q. Have you made a map of your survey?

A. Yes, sir.

Q. Please file the same as "Exhibit No. 1" to your deposition?

1160 A. I so mark it, and file it as such exhibit.

Q. Have you shown on said map Hangover Lead as traced by Hale?

A. Yes, sir; copied it from Hale's map. There is a discrepancy

in our measurements, from the river to Big Fodder Stack, of about 30 poles.

Q. Was this map made by you and Mr. Bogle jointly?

A. Yes, sir.

Q. Please mark on your map in black ink the approximate course of the main Hangover Lead. Mark it "Main Hangover Lead"?

A. I do so.

Q. Did you then run any other line?

A. I run a line up Slick Rock Creek to the mouth of what is called the Big Fodder Stack Gap Branch, thence up the ridge to the east end of the Big Fodder Stack, thence with the mountain to the junction of the Big Fodder Stack Lead and the Hangover Lead.

Q. Did you find on said line any trees with old state line marks? If so, how many together, how many fore and aft trees, and how many side line trees?

A. Yes, sir; I found 41 marked trees on the line, marked as old state line marks. I found ten fore and aft trees and 31 side line trees.

Q. Does the Hangover Lead, so called, as marked on Hale's map, come down to the river gently or abruptly?

A. It comes down very abruptly at the river. It is precipitous.

Q. Referring again to the Slick Rock Creek line, please take up first that portion of the line lying between Slick Rock Creek, and the mouth of Big Fodder Stack Gap Branch, and state how many old state line trees you found on this portion of the line, how many were fore and aft, and how many were side line?

A. Two fore and aft trees and ten side line trees, making twelve altogether.

Q. Are all of these shown on your map?

A. Yes, sir; all shown on my map.

Q. Are they indicated by name of the tree and by number?

A. By name of the tree in black ink and number in red ink.

Q. Please take up this portion of the line in detail and describe each of these trees? Giving the name of the tree, its number on the map, and the character of marks and their age?

A. The first tree we come to is Number 1, cucumber, fore and aft tree. Marked with two hacks above a blaze, on the north
1161 and south sides of it—that is, two hacks above blaze on the north side, and two hacks above a blaze on the south side.

Q. How old are those marks?

A. We blocked this one and it counts 76 growths from the cut.

Q. What do you mean by blocking?

A. Chopping into the tree and splitting out so as to include the old marks in the tree in the timber.

Q. State whether or not it was possible to ascertain accurately the age of the marks without blocking it?

A. No other method that I know of.

Q. Did the outside marks indicate great age?

A. They did.

Q. How old would you say they indicated?

A. I could not tell, they looked old.

Q. You cut out a block, as I understand, on one side?

A. Yes, sir.

Q. If you have that block, please file it marked as "Exhibit A" to your deposition?

A. The bark shows the two hacks and a little of the blaze. I file this block as "Exhibit A" to my deposition. This blosk is in two pieces.

Q. Have you planed down one side of the block so as to count the growth more accurately?

A. I planed the end of that one.

Q. With this method, how close can you come to it?

A. I think I can come within a growth or two of it on that timber there.

Q. That is, you can come within a year or two of telling the number of years since it has been marked?

A. Yes, sir.

Q. Does the accuracy with which this can be done depend on the kind of timber and its condition?

A. Yes, sir.

Q. State whether or not the apparent time would vary at all according to the season of the year in which the marks were made?

A. Yes, sir; it might vary a year according to whether it was made before or after the growth.

Q. In the way in which you have blocked the tree and counted the growth, does anything have to be added for growing over of the scar? If not, why not?

A. I think not. I count from the growth, tracing the growth out from the axe mark. I commence where the cut has entered the wood, and count from that out to the bark.

Q. Then, what does this block indicate as to the age of the mark?

1162 A. That they were made 76 years ago.

Q. Now take up the other trees?

A. The second tree is a birch, a side line. Third was a poplar, fore and aft. The birch is marked with three hacks on the side.

Q. Were they apparently the same age as the marks on the cucumber?

A. Yes, sir; but better preserved. The trees were leaning and the hacks were on the leaning side, and preserved from the weather.

Q. Did those marks correspond with the marks on the tree that was marked 76 years ago?

A. Yes, sir; they looked old, very old, and looked like they would correspond with the ones referred to.

Q. What would those marks mean on the tree?

A. They would indicate a side line tree, a tree that stood off to one side of the state line.

Q. Would they correspond with marks that would have been made on a side line tree by the commissioners who ran the line in 1821?

A. I think they would.

Q. On what side was this tree marked?

A. The tree stood on the west side of the creek and was marked on the east side or facing the creek.

Q. Please give a brief description of the other trees up to the mouth of the branch?

A. Third tree was a poplar marked as a fore and aft tree. Two hacks above a blaze on the northwest side and southeast side. The marks were of the same apparent age of the others. The fourth, fifth and sixth trees are birches, stand on the east side of the creek, and marked with three hacks on the west side of the trees. They looked to be old, very old. They (the marks) looked to be of the same age as the others. The seventh, a lynn on the east bank of the creek, marked on the west, with three hacks on the west side facing the creek. The eighth one was a spruce pine, marked with three hacks. It was standing on the east side of the creek. Marked on the east side, with three hacks. That tree was blocked. Here is the block from it.

Q. Have you prepared this block in a similar manner, and please file it as Exhibit "B" to your deposition?

A. Yes, sir; and I do so file it.

Q. In blocking that, did you have to cut the bark containing the hack?

A. I cut the bark of the lower hack, but left the original mark on the wood on the inside.

Q. How many growths are on that block after the marks were made?

1163 A. I have counted it as 75 and 76 both, one time as 75 and one time as 76. Nos. 9, 10, 11, 12 are spruce pines standing on the east of the creek, and all marked with three hacks as side lines. The marks of the same apparent age as the other.

Q. Did you go up Slick Rock Creek any further beyond the mouth of the branch up the main creek, to see if you could find any marked trees?

A. I went about a quarter of a mile. I found nothing on the creek above Big Fodder Stack Branch.

Q. After you passed the mouth of Big Fodder Stack Branch, did you find any state line marks leading away from Slick Rock Creek, and up the ridge to the top of Fodder Stack?

A. Yes, sir. I found fifteen from where we left the creek at the mouth of that branch to the top of the Big Fodder Stack.

Q. How many fore and aft, and how many side lines?

A. I find five fore and aft trees, and eight side line trees.

Q. Please describe them?

A. The first one, No. 14 on the map, is a spruce pine, and stands south 13 west 12 poles from the mouth of the creek, and marked as with three hacks. The second one, No. 15 on the map, is a spruce pine, marked as a side line.

Q. How close was No. 14 to Slick Rock Creek?

A. About ten poles from the creek, from Slick Rock Creek. No. 16 is a spruce pine marked as a side line, three hacks.

Q. As you approach and come to the mouth of Big Fodder Stack Branch, going up Slick Rock Creek, which continues the line more directly to go up Slick Rock Creek, or on up to the Fodder Stack?

A. The general course would carry us up the ridge to the Big Fodder Stack. The creek here at this point bends to the southeast. No. 17 is a spruce pine stump, fore and aft, but only showed the marks in the bark on the north side. It was a dead pine stump, and the bark had fallen off the south side of it. No. 18 spruce pine, fore and aft, marked with two hacks and a blaze on both sides. No. 19, a spruce pine marked as a side line with three hacks. That tree was blocked, but it was wind shaken so, and the growth come out in little slivers and so very fine, and we could not count them and get any sense out of them.

No. 20 was a spruce pine side line. 21 is two spruce pines and a dead birch, side lines. 22 is a spruce pine marked as a fore and aft tree. 23 is a holly marked as a side line. 24 is a spruce pine, marked as a side line. 25 is a spruce pine marked as a side
1164 line. It is blocked and is marked. I here file it as Exhibit "C" to my deposition.

Q. How many years ago since the mark was made, as that block shows?

A. I count 75 on it. 26 is a maple marked as a side line. In cutting out block of No. 25 we had to cut out a portion of the bark, showing the lower hack, but the mark is shown in the wood below. 28 is a fallen chestnut oak; I have the bark here, showing the hacks on them. I file these pieces of bark as Exhibit "D" to this my deposition. No. 29 is a chestnut oak marked as fore and aft. Each of the three pieces marked as Exhibit "D" have a piece of paper on them marked as Exhibit "D" to deposition of H. S. Hayes. The cuts on No. 29 look plain on the southeast side, and not so plain on the northwest side. The northwest side is more exposed side. No. 30 is a spruce marked as fore and aft. On the east shows two hacks and a blaze plainly. On the west side only one hack shows. The west side of this would be the most exposed.

Q. Is that the spruce pine referred to by Hale and Wilson in their deposition?

A. I think this is the spruce pine they referred to, and as they described it in their deposition. 31 is a mile stone set up by McClellan. 32 is a white oak blocked by Mr. Hale and Miller I think. We are now on top of the mountain, and started out on the Fodder Stack Lead towards the Hangover Junction.

Q. From the point where the ridge strikes the main lead to the ridge, strikes the main lead up to the Junction between Fodder Stack and Hangover Lead, how many state line trees did you find of each kind?

A. Seven altogether, including the white oak. Two fore and aft trees and five side lines.

Q. Passing the white oak, describe these other trees in detail.

A. After passing the white oak about forty poles, we passed a mountain oak marked as fore and aft (this tree is often called Spanish oak.) Marks show on the north side of this tree, but not on the south side.

Q. Which was the exposed side?

A. I don't remember. This tree looks too young. No 36, a

spruce pine side line, blocked. I have the block and file it as Exhibit "E" to this deposition. This block was taken of a spruce pine near Glen Gap.

Q. How many years does this show since it was cut?

A. 75, but it is wind shaken, which may make a difference of one or two years. I counted 75 on it. No. 39, spruce pine,
1165 marked as a side line. No. 40 is a spruce pine marked as a side line, three hacks. On the block Exhibit "E," the third hack mark does not show on the outside of the block as cut. It has been taken to pieces as shown and nailed together, and on the inside the third hack shows. No 41 is two spruce pines, one marked as a side line, one marked as a fore and aft. 42 is a spruce pine marked as a side line. From there on to the junction of the two mountains I did not look for any marked trees. There was a storm raging and I did not look any further.

Q. In the 41 trees that you have spoken about as state line trees from the mouth of Slick Rock Creek to the last trees mentioned, please state whether all of them were old enough trees to have been marked in 1821?

A. Yes, sir.

Q. Please state whether the marks on all these trees seemed to correspond in age to the ones blocked out?

A. Yes, sir, they all seemed to be the same age as the ones brought and blocked.

Q. Please state whether or not in speaking of each of these trees as fore and aft trees that you meant that they were marked with two hacks above a blaze on each side in the direction the line was running, and in speaking of them as marked as side line trees you meant with three hacks on the side towards the line?

A. Most all of the fore and aft trees showed two hacks and a blaze on both sides, but the spruce pine on the ridge, and the spruce pine stump near the creek only shows it on one side. All the side line trees are marked with three hacks, every one named there.

Q. What kind of an axe or instrument did they seem to have been marked with?

A. About a three-inch blade.

Q. Were they all marked with the same kind of an instrument?

A. I think so.

Q. The marks that you noticed on the Hangover Lead, were they marked with the same?

A. No, sir, the black oak seemed to have been marked with a narrower axe, about two inches, and the sourwood with a wider one, what is called a felling axe, making a broader mark than the trees marked on the state line referred to.

Q. Do you know in that part of North Carolina any lines that have been marked with a small axe like the one on the black oak?

A. Our old County Surveyor, Mr. Piercy, used a narrow axe like a tomahawk. His lines are all marked with that sort of axe,
1166 about the same kind of mark as the one on the black oak. Occasionally they show a little wider when the mark spreads.

Q. When was the first official survey ever made of this part of the country under North Carolina laws?

A. None up to 1851 that I know of.

Q. Do any of the marks on any of the trees on the Hangover Lead that you examined, indicate any marking earlier than that date?

A. None that I saw.

Q. What is the principal body of trees along the Fodder Stack Lead?

A. Mostly chestnut and oak. The timber is small, most of it near where you get to the junction, and consists principally in buckeye and beech. It mainly consists of chestnut on the Fodder Stack Lead.

Q. Does chestnut hold marks as well as the other timber?

A. I think not, sir; the bark is soft and wears off.

Q. Did you discover any corner trees indicating private line trees, along the top of the Fodder Stack?

A. Yes, one mountain oak, North Carolina corner, numbered on the map as 36. It seems to be about like the marks on the Hangover Ridge; the black oak, on the Hangover Lead, about the same age, looks about like that.

Q. Is there three hacks on two sides?

A. Yes, sir.

Q. About how old does it seem to be?

A. Tolerably old, about forty or fifty years old. I would suppose about forty years old. That is my best judgment.

Q. Did you run across any mile stones set up by McClellan on the Fodder Stack?

A. Yes, sir, I indicated all of them on the map, between the Fodder Stack and the junction of the Fodder Stack and Hangover Lead. No. 44 on my map is McClellan's mile stone marked 29-72.

Q. What McClellan is that, and when did he run that line?

A. J. R. McClellan, of Murphy, N. C. The line was run in Sept. and Oct., 1893; four years ago this fall.

Q. I wish you would examine a map of Range 6 E. F. T. 2 N. in the Ocoee District, filed as Exhibit "A" to the deposition of T. E. H. McCroskey in this cause, and assuming that the Range lines in said district were run at an angle North 20 degrees East, state whether or not on comparing said map with your map, making due allowance for difference in scale, the eastern line of said township shown on said map corresponds approximately in its general features
1167 with the state line run by you up Slick Rock Creek, and up the ridge and along Fodder Stack Lead?

A. Approximately, I think it does. The creek is not so crooked as ours is laid down on our map. (The creek is not so crooked as ours), but, approximately, it seems to correspond with ours.

Q. Please measure the distance on each of said maps from the mouth of Slick Rock Creek to the point where the line leaves the creek, and state how nearly they correspond?

A. On the map of the Ocoee District the distance from the mouth of the creek to the point where the line leaves the creek is 1160 poles, and on our map is 1120. Now, there is a difference in that scale there, 120 poles to the inch is as near as I can get it.

Q. Please state whether or not, near the point on the Big Fodder Stack, where your line intersects the same, two creeks run down?

A. Two creeks head near the Big Stack Gap, one runs off in a westwardly direction, and the other northeast into Slick Rock Creek.

Q. The last one you referred to, is it a branch of the Big Fodder Stack Branch?

A. Yes, sir.

Q. I read you from Section 61 of the Code of Tennessee of 1858, describing the boundary line between Tennessee and North Carolina, as run by Commissioners in 1821. According to said section, the line as run begins at a stone on the north side of Catalooche Turnpike road, and runs thence in a southwestwardly course to where it strikes the Tennessee River, about seven miles above the old Indian town of Talassee, and as stated in said section "crossing Tennessee River at the distance of 65 miles from the beginning; from Tennessee River to the main ridge and along the extreme height of the same to the place where it is called Unicoi or Unaka Mountain," etc., I ask you whether or not the line as run by you up Slick Rock Creek and up the ridge, and thence along the top of the Fodder Stack lead answers the description of said Section as a line running "From Tennessee River to the main ridge?"

A. I think that it does, sir. While you might have gone up the other lead and answered the description too.

Q. You think that going up either this way or the Hangover Lead would answer the description from the river to the main ridge?

A. I think so.

1168 Q. How close to the river's edge does the precipitous descent of the Hangover Lead come?

A. Right down close to the water's edge, with just room enough in some places to pass.

Q. I show you two maps, both marked "U. S. Geological Survey, J. W. Powell, Director"—one marked "North Carolina, Nantahala Sheet" and the other marked "Tennessee, North Carolina, Murphy Sheet"—I ask you to file the same as Exhibits "F" and "G" to your deposition, respectively?

A. I so file them.

Q. Please state whether or not said maps are official maps published by the Department of the Interior of the U. S. Government, and based on U. S. Surveys?

A. I think so. They are similar to ones I got.

Q. Please state whether the north west corner of Exhibit "F" and the north east corner of Exhibit "G" show the lands in dispute?

A. They do.

Q. Please state whether or not the line between Tennessee and North Carolina as marked on said Exhibits "F" and "G" of the aforesaid government maps show the line as you have shown it on your map and as you found the marked trees, viz.: running up Slick Rock creek to the ridge; thence up the ridge to the top of the Big Fodder Stack; thence along the Big Fodder Stack lead to its junction with the Hangover lead?

A. Approximately, sir, I think it is the same line that we have on our map.

Q. Please mark on your map the point where the township line on the south of the fractional township shown on Exhibit "A" to T. E. H. McCloskey's deposition would cross the state line, plotting the same on the scale of Exhibit "A," and mark the same in red ink, "Township line"?

A. I do so.

Q. Mr. Hayes, in the light of the section of the Tennessee Code No. 61, of 1858, which is here shown you and from which extracts have been made as above describing the line run by commissioners, and in view of all the circumstances, the topography of the ground, the marked trees on the ground, what is your opinion, as a surveyor, as to the location of the state line in the land in dispute?

A. I think it is with our line. The line along which I found the marked trees and described in the margin of my map.

Q. Have you any doubt about it?

A. None whatever.

1169 Cross-examination by T. E. H. McCroskey:

Q. In the survey and location of the state line by yourself and J. C. M. Bogle, where did you first begin your work?

A. The first work I did was to hunt what was marked on the map as Fork Ridge.

Q. That ridge leads from Little Fodder Stack to the forks of Big Slick Rock and Little Slick Rock creek, does it not?

A. Yes, sir.

Q. Was Mr. Bogle with you on this?

A. No, sir, he wasn't with me on that.

Q. What was your reason for hunting out that ridge?

A. There is a kind of a tradotional understanding in our state that the line went up that ridge.

Q. Several years ago you as a surveyor run a line down that ridge trying to locate it as a state line, did you not?

A. No, sir; my son did run a line down there.

Q. The people of North Carolina, including yourself, had claimed the Fodder Stack Ridge, and Slick Rock Ridge as the state line?

A. No, sir; I don't remember of ever hearing any person say it went down there.

Q. Where did they claim that the state line is?

A. The only claim that I know of was from Little Fodder Stack down Fork Ridge here to the mouth.

Q. Where did you and Mr. Bogle together do the first work?

A. Over there at the mouth of Slick Rock creek.

Q. Then how did you run?

A. We ran up the creek to the mouth of Little Slick Rock.

Q. Before you began the survey, had not you and Mr. Bogle made up your mind that the state line ran up Slick Rock Creek?

A. To some extent I had.

Q. Which is the highest ridge, the Hangover Ridge or the Fodder Stack Ridge?

A. That is something that I don't know what I can answer correctly. From the Little Stack out to the junction is higher, would average higher than the Hangover Lead; the average height of it would be a little greater until you start on the Hangover.

Q. Is not the Hangover Peak higher than the Big Stack?

A. I don't know; I had no barometer. The Hao is higher than either of them, I think.

1170 Q. Does not the government maps which you have filed as exhibit to your deposition show the Hangover to be 800 feet higher than the Fodder Stack?

A. I could not answer it. I have never examined them in that particular.

Q. Why is it called the Hangover Lead?

A. On account of a sudden drop off there. I could not tell the height of the rock, called the Hangover.

Q. Does not that cliff give name to that entire lead or ridge?

A. I think it does, sir; that has been my understanding of it.

Q. Taking the marks as state line shown by you on your map, beginning with No. one marked fore and aft I — how far is it from the creek?

A. About 1 pole, I think, west of the creek. I did not take the distance.

Q. How far from the creek is the next, No. 2, marked as a side line?

A. About the same distance; something near one pole.

Q. The next, No. 3, marked fore and aft?

A. I think it is about ten feet from the bank of the creek.

Q. I notice that Nos. 1, 2, and 3 are on the west side of the creek and Nos. 5, 6 and 7 are on the east side of the creek. How did you explain that?

A. They cross the creek there, is the only explanation I can give of it. I searched both sides of the creek but found nothing on the west side.

Q. How far is it from No. 3 to No. 4?

A. 53 poles, I think, sir.

Q. How far from the creek are Nos. 4, 5, 6 and 7?

A. They all stand near the bank of the creek near the water's edge, one of them. I don't remember which, stand- next to water.

Q. On which side marked?

A. Side next to creek?

Q. All marked next to creek?

A. Yes, sir, all that you named.

Q. On which side was No. 8 marked?

A. It was marked on the east side, opposite from the creek.

Q. Nos. 9, 10, 11 and 12—how far were they from the creek?

A. One of them was a little over a rod but I could not designate which one it was. The others are all near the bank of the creek.

1171 Q. Did you make an actual survey of the creek from its mouth up to where Big Fodder Stack Gap branch?

A. Yes, sir, but from the mouth of Little Slick Rock in several

ed at any other place except Big Slick Rock Creek as you claim.
f so, where did you see such side line marks, and particularly
nate them so that they may be again located?
I say that from the Code of North Carolina, adopted in 1822,
e legislature on the commissioners' report, adopting the com-
oners' report. Yes, sir, on the state line from the Unaka Turn-
here the turnpike crosses the Unaco Mountain going to Madi-
le, from there to Hiawassee river, about 2 miles, on the bank of
ylor's ferry road, you will find a marked oak with three hacks
ide line. There are several other trees there, showing the three
but I can't locate any of them definitely, but that one.
How do you know that that is a side line mark?
I have run the line there.
Is that all the evidence you have that it is a side line mark?
The only evidence I have is that it is directly on the side of
ith other trees there, the one that is called for.
going back to your survey up Slick Rock Creek, the marked
os. 1, 2 and 3 are, as I understand you, about the same dis-
from the creek?
Yes, sir.
f they are all about the same distance from the creek, how
n explain that some are marked as a side line and some fore
?
The only explanation I can give is they took a bearing there
general course of the creek and struck these trees. They
ed to be on the line.
From No. 4 to No. 12 all marked side lines and some of them
are very near the creek. How do you explain that none of
re marked fore and aft?
suppose that they did not hit any of them. It is only sup-
with me.
Q. Trees are quite numerous with that creek?
A. Tolerably so.
Q. Isn't it probable that they would strike some trees in
tance?
es, sir, they might have done so. It is laurelly and rough.
s a matter of fact, is it not very laurelly and rough up Slick
reek?
es, sir.
ould it not have been much easier for the commissioners
the state line to have gone up the Hangover Lead to the
r, and thence along to where it was undisputed, thence
Big Fodder Stack and thence along said ridge to where it is
ed?
hink it would, sir, have been easier on them.
calling from the river to the main ridge, would it not be
tural to follow up the ridge than to follow up the creek
creek is mentioned in the report of the commissioners?
hink it would have been, sir.
the state line coming from the north east strikes the river

at ½ mile or more above Slick Rock Creek, would it not still be more natural to follow up the ridge leading to Hangover?

A. Yes, sir.

Q. In Section 61 of Tennessee Code, read to you in examination-in-chief, continuing further to where it strikes Hiwassee river, it says—thence up said river the same course about one mile and crossing the same to maple. There it follows up the river and mentions the fact in the report. From your experience as a surveyor, if they had run up Slick Rock Creek some six miles or more, why would they have not said up the creek, instead of saying thence to the main ridge?

A. I think I would have noted it running up that creek, had I been the surveyor.

Q. As from your experience as a surveyor, is it not a fact that they almost invariably note creeks or water courses when they follow up them?

A. Yes, sir. I think as a rule it is generally done. I do myself.

Q. Is it not a fact that the Fodder Stack lead is a spur of the main mountain, and is it not considerably lower where it leaves the main mountain than the ridge itself?

A. It is lower going northeast for two miles. There is very little difference after the first two miles.

Q. Have you ever been on the mountain north of the river?

A. Only at the turnpike road and a little distance down the ridge towards the river?

1174 Q. Then you can't speak as to the general appearance of the ridges south of the river on approaching the river from the north side?

A. No, sir.

Q. And you can not tell what the natural course for the commissioners to take would be if they were approaching from the north side?

A. No, sir. I can not tell what course they would have taken.

Q. You can't tell either why the commissioners, if they did adopt Slick Rock Creek, would first start up on the west side and after running a distance cross to the east side?

A. I can account for that. It got so rough they had to cross. It was impassable. We had to change sides several times.

Q. If you had to change sides several times, then why could you not find marked trees on either side of the creek several times?

A. After we crossed the creek at No. 4 we only run on the west side a short distance until we passed the rock cliff on the east side.

Q. Then did you look out for marks on that west side?

A. Yes, sir, we examined both sides of the creek carefully.

Q. About how many times do you suppose you crossed the creek on account of its being so rough?

A. About six or seven times until we got to the mouth of Little Slick Rock. Then we kept on the west side all the way up. I don't remember crossing the creek with the survey above Little Slick Rock, though we hunted on both sides for state line marks.

Q. From No. 12, to the mouth of Little Slick Rock is about a mile, is it not?

A. Yes, sir, between three-quarters and a mile.

Q. You found no marks in that distance?

A. No, sir, we found no marks.

Q. Why did you keep on the west side of Slick Rock Creek after you passed the mouth of Little Slick Rock?

A. It was not so rough on that side, but we had to offset on that in a good many places.

Re-examination:

Q. Did the fact that before you made your survey you thought the line ran up Slick Rock influence you in making your survey, and your judgment about the marks on the trees?

A. Oh, no, sir; that did not have any influence with me at all.

1175 Q. I wish you would look at the government maps filed as Exhibits "F" and "G" to your deposition, and state whether they correctly show the general topography of this section of the country, and the general lay of the mountains?

A. Yes, sir; I think they do on the North Carolina side. I am not acquainted on the Tennessee side.

Q. Are you acquainted with that scope of the territory between the Hangover and the Cheoah river?

A. Yes, sir, I have been over it surveying several times.

Q. Where has most of your work as surveyor been done?

A. The most of it has been done in Cherokee and Graham counties, North Carolina.

Q. This topographical map indicates that going eastwardly from the junction of the Hangover Lead and the Fodder Stack, after you pass the Stratton Bald the ridge divides in four directions, one going eastward to the Santeecla creek, one running between this creek and Deep creek to the Cheoah river, one running between Deep creek and Bear creek to the Cheoah river, and one running northward to the Little Tennessee river as shown on Hale's map? Is that the way the ridge does divide?

A. Yes, sir.

Q. Which one is the main ridge?

A. The one running between the Little Santeecla creek and the Deep creek to the Cheoah is the main ridge.

Q. Are the marks on the state line trees on land in dispute to which you have testified on direct examination the same as other marks on the state line at other places you have surveyed as testified to on cross-examination?

A. Yes, sir.

Q. The same in their character, apparent age and general appearance?

A. Yes, sir. They look to be the same. I never have cut any of them out only what are here to see how they are.

Q. State whether it would be customary for a surveyor in running a line up a creek in a rough country as this was to take bear-

ings ahead for general courses along the creek for some distance and then in running that line to mark trees as side line trees according as they fall on one side or the other of this general bearing?

A. I think it is.

Q. Please examine original North Carolina Grant No. 2336, here shown you, to L. W. Gilbert and Wm. H. Peet, dated Dec. 19th, 1860, and recorded in the register's office of Graham county, North Carolina, in Book H at page 455, together with annexed plat, and please plot on your map in broken red lines the boundaries of said grant so far as they are contained in space of your map, on theory that the state line is as shown on your map; where the line of the grant coincides with the state line plotting it just on the east of the state line mark, so as to distinguish it from the state line and mark same Gilbert and Peet Grant, and please file said original grant, marked Exhibit "H" to your deposition.

1176

A. I do so as requested and mark said grant Exhibit "H." to my deposition.

Q. Do you know the beech beginning corner of said grant; if so, please state where it is located?

A. Yes, sir, it is located on the Fodder Stack Lead about 4 poles north of its junction with the Hangover Lead.

Redirect examination:

Q. Is it not a fact that the U. S. Geological Maps filed by you as exhibits to your deposition were made and issued within the last few years?

A. Yes, sir.

Q. Is it not a fact also that the survey upon which said maps are based were made within the last few years? State when said survey and maps were made as nearly as you can?

A. Yes, sir; in 1892, as my recollection now. I could not be positive as to the date of it.

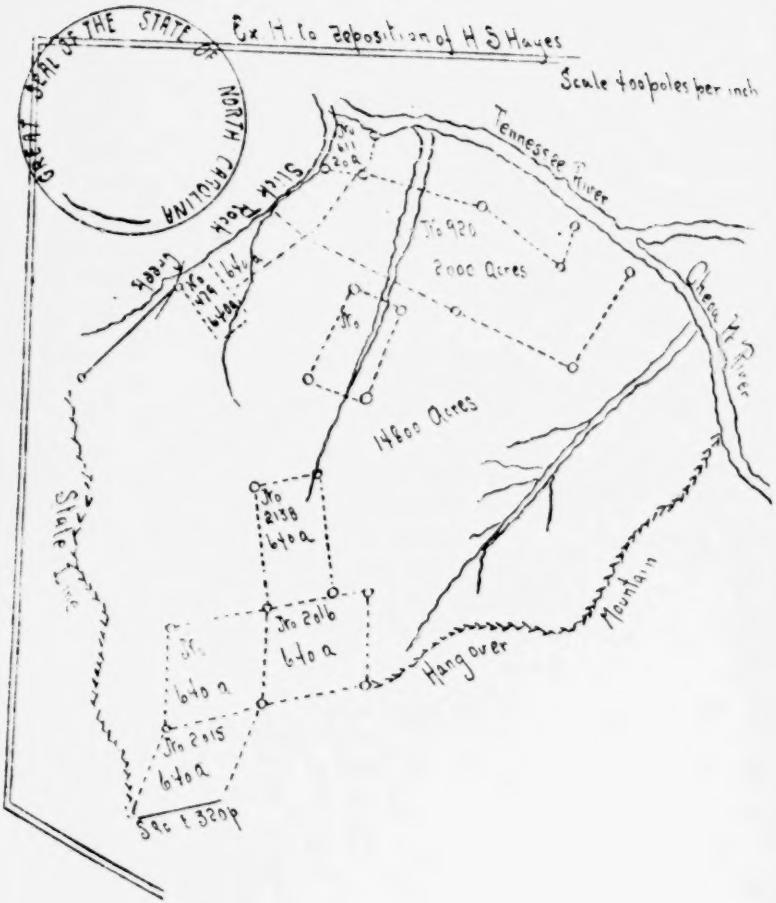
Q. Is it not a fact also that both said survey and map were made with reference to the geological and topographical features of the country, and not with reference to fixing state lines?

A. Yes, sir.

And further saith not.

H. S. HAYES.

(Here follows diagram marked page 1177.)


Ex 14 to Deposition of H S Hawes
Scale 4 rod poles per inch
GREAT SEAL OF THE STATE OF NORTH CAROLINA
Tennessee River
Stack Rock
Creek
No 920
2000 Acres
No
14800 Acres
Cherokee River
State Line
No 2158
640 a
No 2016
640 a
No 2015
640 a
Sec 1 320 p
Hangover
Mountain

1177

1178 STATE OF NORTH CAROLINA,
Cherokee County:

By virtue of a warrant, No. 1035, issuing from the Entry Taker of said county, I have surveyed for A. H. Colvard, a certain tract of land lying in said county in district No. 10. Beginning on a beech tree on the state line where the Hangover Mountain strikes said —, near a corner of No. 5051, and runs with said line S. 80 E. 320 poles to a mountain oak; then with the line of No. 4455 N. 40 E. 320 poles to a Spanish oak; then N. 45 E. 28 poles to two water oaks; then E. 92 poles to a large rock on the top of the second high peak of the Hangover; then down the ridge with its meanders to a service tree on the bank of Cheoah river; then down said river and its meanders to the Tennessee river; then down said river and its meanders to a corner of No. 611 at the mouth of Slick Rock Creek and the state line; then up said creek with said line to the top of the mountain to a locust on said line; then with said line & its meanders to the beginning; containing fourteen thousand & eight hundred acres more or less, with eight several tracts platted out as doth appear on the plat.

Surveyed April 17th, 1856.

J. W. C. PIERCY, *S.*
F. N. MOSS, *M.*

C. B., JASPER ROGERS.
WM. CARINGER.

No. 2336.

STATE OF NORTH CAROLINA:

Know ye, that we, for and in consideration of the sum of three thousand two hundred and twenty-three and 85-100 dollars, paid into our treasury by L. W. Gilbert and Wm. H. Peet, have given and granted and by these presents do give and grant unto L. W. Gilbert and William H. Peet, a tract of land containing fourteen thousand and eight hundred acres, lying and being in the county of Cherokee, Section No. 1035, in District No. 10, it being part of the land acquired by treaty from the Cherokee Indians, and sold in obedience to an act of the general assembly of this state, bounded as follows, viz.:

Beginning on a beech tree on the state line where the Hangover Mountain strikes said near a corner of No. 5051 and runs with said line south 80 east three hundred and twenty poles to a mountain oak.

Then with the line of No. 4455 north forty, east three hundred and twenty poles to a Spanish oak:

Then north forty-five east twenty-eight poles to two water oaks;

1179 Then east ninety-two poles to a large rock on the top of the second high peak of the Hangover;

Then down the ridge with its meanders to a service tree on the bank of Cheoah river;

Then down said river and its meanders to the Tennessee river;
Then down said river and its meanders to a corner of No. 611
the mouth of Slick Rock creek and the state line;
Then up said creek with said line to the top of the mountain to
locust on said line;
Then with said line and its meanders to the beginning.
Entered the 1st day of June, 1853.
As by the plat hereto annexed doth appear, together with
woods, waters, mines, minerals, hereditaments and appurtenance
to the said land belonging or appertaining, to hold to the said L. W
Gilbert and William H. Peets, their heirs and assigns forever: Yiel
ing and paying to us such sums of money yearly or otherwise,
our general assembly from time to time may direct. Provided,
ways, that the said grantee shall cause this grant to be registered
the register's office of our said county of Cherokee, within twel
months from the date hereof, otherwise the same shall be void.
In testimony whereof, we have caused these our letters to be ma
patent, and our great seal to be hereunto affixed.
Witness, John W. Ellis, Esq., our governor captain-general a
commander-in-chief, at Raleigh, the 19th day of December, in t
85th year of our independence, and in the year of our Lord o
thousand eight hundred and sixty.

JOHN W. ELLIS.

By Command:
RUFUS H. PAGE,
Secretary of State.

No. 1035. No. 23

L. W. Gilbert & William H. Peet—1480.

Cherokee County.

Recorded in the Secretary's Office, Page 10. Rufus H. Page,
Secretary.

The within grant was duly registered in the register's office
Graham county, N. C., in book "H." on page 455, this Novemb
16th, 1896.

W. F. MAUNEY,
Register of Deeds.

Exhibit "H" to deposition of H. S. Hayes. Filed Nov. 23, 189
J. T. Carter, Deputy Clerk.

1480 The next witness, J. C. M. BOGLE, being duly sworn,
posed as follows:

Examined by Mr. SANFORD:

Q. What is your age; where do you live, and what is your oc
pation?
A. I am a surveyor; I live in Loudon county; am 66 years old.
Q. How many years have you been a surveyor?

A. I was elected county surveyor of Blount county, Tennessee, in 1856.

Q. Have you been county surveyor of any other county besides Blount?

A. I am now surveyor of Loudon county, Tennessee.

Q. And have you been in the business practically ever since 1856?

A. Yes, sir.

Q. Have you surveyed any in mountain lands?

A. Yes, sir.

Q. What experience have you had in surveying mountain land?

A. I have surveyed mountain lands in Blount county, Tennessee, and some in North Carolina.

Q. Were you employed in connection with Mr. Hayes by the defendants in this case, to ascertain or endeavor to ascertain the true location of the state line?

A. Yes, sir.

Q. Did you go with Mr. Hayes on the trip that he made for that purpose, and about which he has testified in this case?

A. Yes, sir; I did.

Q. And with the party which he names in said testimony?

A. I did.

Q. Was that a careful search that was made by your party?

A. Yes, sir; we made a very careful search; that was my instructions.

Q. Did you go up the so-called Slick Rock Ridge shown on Hale's map?

A. No, sir.

Q. Did you go up the ridge marked on the map filed as "Exhibit A" to Mr. Hayes' deposition as Fork Ridge?

A. I did.

Q. Did you find any marks on the trees on that ridge?

A. Yes, sir; some old ones but not as old as they ought to be, to be state line marks. The most that we found were Ocoee District marks.

1181 Q. Did you find any state line marks?

A. I don't know that we did.

Q. Did you make any search along any portion of the Hangover Lead?

A. Yes, sir.

Q. Did you have a copy of Mr. Wilson's deposition given in this case, and of Mr. Hale's notes with you?

A. I had a copy of Mr. Wilson's deposition with me. I read over Mr. Hale's notes before we went, and took down such as I thought we would need in locating the line.

Q. On what portion of that Hangover lead did you go?

A. I went back north from the Slick Rock Gap to near the Tennessee river, and went south to what they say was Big Fat Gap.

Q. Then you went the entire distance from Big Foot Gap to within a short distance of the river?

A. Yes, sir; in going from Slick Rock Gap north we turned off down so as to strike the mouth of Slick Rock Creek.

Q. Did you go to the trees that Mr. Hale and Mr. Wilson testi
about?

A. Yes, sir; I think we found them; I am satisfied we fo
them.

Q. Did any of those trees on that portion of Hangover lead l
marks showing them to be state line marks?

A. Not according to what I understand the state line marks to

Q. What do you understand the state line marks to be.

A. I understand them to be two hacks and a blaze for fore
aft, and three hacks for side lines.

Q. When did you understand this line to have been run?

A. According to the Code, in 1821.

Q. How old did these marks which you found seem to be?

A. That would be only a matter of conjecture; they were perh
30 or 40 years old.

Q. Did you go to the black oak which Mr. Hale described as be
$^3/_4$ of a mile from the river?

A. Yes, sir; I think we did.

Q. Did you find a black oak with marks on it that distance f
the river?

A. Yes, sir; I suppose it was that distance; we didn't measur

Q. What were the marks on that oak?

A. I believe them to have been N. C. land marks, because t
would suit for that, and they were not old enough to be state
marks.

1182 Q. What do you understand to be N. C. land marks?

A. Three hacks as you approach and three going from
tree.

Q. And this tree was marked with three hacks and in that w

A. Yes, sir; that is the way it was marked.

Q. And the marks were not old enough for state line marks?

A. Not old enough for state line marks.

Q. Were they made with a wide axe?

A. No, sir; an ordinary axe, maybe a little narrower than
ordinary axe.

Q. Did you go to the sourwood in the Gap?

A. Yes, sir.

Q. Did that have any state line marks on it?

A. No, sir; it had several marks on it, but I don't think they w
state line marks.

Q. Why?

A. They were irregular and were made by a broader axe tha
tomahawk. The state line marks all seem to be regular, but th
marks on the sourwood seemed to be irregular.

Q. Was there any marks on that sourwood of sufficient age to h
been made in 1821, and of the proper kind for state line marks?

A. Well, we did not block it, but I don't think they are old eno
for state line marks.

Q. What is your judgment as to their age?

A. Perhaps 40 years, they might have been as much as 50 y
old, but I would guess them to be 40 years.

Q. Did it have any regular state line marks on it?

A. No, sir; there were too many marks on the large tree, and as I told you they are irregular. It would be marked like men standing in different places had made them.

Q. Does that sourwood stand near a trail?

A. Yes, sir.

Q. Do you know what the gap has been used for?

A. Only by hearsay. There is an old trail that men say was an Indian trail. I never was there before.

Q. Did you go to the black oak that Mr. Hale next speaks of, as being one mile and sixty-three chains, and marked as a corner?

A. I think we were there. We found a tree that I think corresponded with Mr. Hale's notes. Of course we didn't measure the distance.

Q. How was it marked?

A. It was marked with hacks like a North Carolina corner.

1183 Q. Old or new?

A. If I remember right they were about 15 or 18 years old. I don't remember well about this. I remember distinctly about the sourwood because I took notes about it at the time.

Q. Which way did the piece of land lie in North Carolina as indicated by the marks?

A. Eastwardly.

Q. How did the North Carolina land lie as indicated by the marks on the black oak?

A. Eastwardly; on the west side was towards Tennessee, line not far distant.

Q. Did you go to the chestnut oak at one and a half miles that Mr. Hale speaks of?

A. I think we did. I think we found that but concluded that it was not marked; that it was a path and that some fellow had just hacked it. I am not so sure about that. There was one tree that we thought was just a path mark, and another that we thought was a North Carolina corner.

Q. From whom did you get your information as to the location of the Hangover lead, and of the names of the different places up there?

A. From Rube Carver, Mr. Hayes, and I think also from Henry Ditmore.

Q. Did you go with Mr. Hayes in the survey up the Slick Rock creek, and up the Big Fodder Stack Ridge?

A. I was in the survey from the mouth of Slick Rock creek to the ridge leading from the mouth of Big Stone Branch to the east end of Big Fodder Stack, and a little way up the ridge. We went up that ridge searching for marks, and then the next day we moved camp, and I didn't go up the ridge on the survey. That is to say, I didn't go with them all the way.

Q. Taking the survey as far as you went up that creek with him, describe the marks on the different trees as you found them, and state what they indicated?

A. We had our notes and we made that map, which is as exact

as we could make it. The marks are very old on this line, and the blocks which we cut out show that they are at least 75 years old. At one place where we left the creek and branch they are very thick for a few chains; a few are 'fore and aft' and considerable numbers more are side lines. Mr. Hayes and I both made memoranda in our books showing how they were. There were a good many more side lines than there were fore and aft.

Q. Were you with him on all the survey beginning at Slick Rock creek to the maple marked 26 on map and from spruce pine
1184 No. 30 on the map to the junction of the Hangover lead and the Fodder Stack lead?

A. No, I was not. I was with him from the mouth of the Slick Rock creek to the maple marked No. 26 on the ridge, and then I went off and moved the camp. Then we came back on this line near Glen Gap and it was stormy and I didn't go any further.

Q. Then, as shown by this map, you left the survey at the maple marked 26. What was the first tree you came to when you came back?

A. We first struck McClellan's mile stone up there, No. 31-70 on the map, being marked in red ink, No. 37.

Q. And you continued with him until you passed what point?

A. I didn't go with him more than a little piece. I went with him until we passed the two spruce pines marked side line and 'fore and aft' No. 41, on the map.

Q. I ask you this question: In all of the survey in which you were with Mr. Hayes, does his map correctly indicate the trees and the marks on them?

A. Yes, sir.

Q. Did you see them all?

A. Yes, sir.

Q. Did each of them have marks on them as shown on his map?

A. They did.

Q. Were these marks sufficiently old to have been made in 1821?

A. Yes, sir; I think they were.

Q. They were marked with two hacks and a blaze on both sides for fore and aft tree?

A. Yes, sir; one or two, like spruce, pine stump, the marked part had fallen off on one side.

Q. And with three hacks for side lines?

A. Yes, sir.

Q. And you think they were of sufficient age to have been made in 1821?

A. Yes, sir.

Q. Did you examine the blocks which he has filed as exhibits to his deposition?

A. Yes, sir.

Q. Did you count the growth on those blocks?

A. Yes, sir.

Q. Did you and he agree as to the number of growths on the blocks?

A. Not exactly. I found exhibit "A" 75 years old; I
1185 counted exhibit "B" 76 years old; exhibit "C" 75 years old, and exhibit "E" 75 years old.

Q. What do those figures indicate in each case?

A. They indicate so many years since the cut had been made on the tree.

Q. The way you count them do you have to add anything for growth for healing over the scar?

A. No, sir; I start from the year's growth in which the hack was made.

Q. Would the season of the year in which they were cut make any difference in the apparent growth?

A. I think it would. I don't know exactly how nature makes it. I count one hard streak and soft streak for a year's growth. I suppose the soft streak grows in the spring and the hard streak in the fall.

Q. Would there be any slight difference owing to the condition of the tree?

A. You might very easily make a mistake by counting two years' growth for one; I don't think you would be likely to make a mistake the other way. The rings grow very close together in some places, and it sometimes is very hard to count them.

Q. Is there a discrepancy between you and Mr. Hayes of more than one year's growth in any instance?

A. I think not; I have forgotten exactly how that is.

Q. Now, the other trees which were not blocked on that portion of the survey on which you were, did they look different with respect to the manner in which they were marked and the age of the marks, or were they the same as those you blocked?

A. I think they were the same age; they looked just like them.

Q. Did they seem to be the same, or made by a different instrument?

A. By the same tomahawk.

Q. What do you mean by tomahawk?

A. A little marking axe with a blade two and a half or three inches wide.

Q. Was it a common hack for old marks of that kind?

A. I suppose it was. Where I first surveyed, they used a tomahawk, and I suppose that the surveyors that laid off the state line did the same.

Q. When was the Ocoee district first surveyed?

A. I understand that it was surveyed in 1837, somewhere along there; I don't just know the date. The act was passed in
1186 1836.

Q. Were there ever any Tennessee grants on that section of the country before that date?

A. Not that I know of.

Q. Have you surveyed the range lines of the Ocoee district?

A. Yes, sir.

Q. At what angle are they run?

A. They are run 20 degrees off. From north and south, and

from east and west they run with a variation of 20 degrees from the compass. That is the way they are run.

Q. Please compare the map of your survey with the map of the township of Ocoee district which is filed as Exhibit "A" to the deposition of T. E. H. McCroskey, and state whether the east Ocoee line, shown on said map, Exhibit "A," corresponds substantially with the state line shown on your map?

A. I examined that and I thought it did fit very well, though the plots were made on a different scale.

Q. Does the state line as shown on the government maps filed as exhibits "F" and "G" to the deposition of Mr. Hayes, correspond with the state line as shown on your map?

A. It is just like the other; it is on a smaller scale than the Ocoee or our map, but it looks the same.

Q. Does the state line run up creek and ridge and then on the Fodder Stack lead to the junction, as the same is shown on that map?

A. That is the way it seems to show.

Q. In Section 61 of the Code of Tennessee of 1858, it is stated that the boundary line of the state of Tennessee and North Carolina runs southwestwardly from Cataloochee Turnpike, crossing the Tennessee river at 65 miles, and from the Tennessee to the main ridge, and along the extreme height of same to Unacoi or Unaka Mountain. Please state whether the line run by you and Mr. Hayes would answer the description so given as running from the river to the main ridge?

A. I think it would fill the bill perhaps as well as any other.

Q. In running up a creek where the country is rough would it be usual and customary for surveyors to take a general course of the creek for some distance and then mark trees along the course as side lines on either side according to which side of the tree the line passed on?

A. If they did that that is the way they would mark them. Some might take the meanders of the creek, and some might do as you suggest.

Q. Which way did the commissioners in this case apparently do?

A. I think they would make corners. They would, per-
1187 haps, take a straight shoot, keeping along close to the creek some places a little further off than others.

Q. Taking into consideration the section of the code above referred to and which is here shown to you, the marks on the trees on the Hangover lead and up the creek and other places that you searched and considered the general topography of the country and the marks on the trees, what in your opinion is the line run by the commissioners of the state of Tennessee in 1821, as the state line?

A. I would base my judgment on the state line marks more than the topography of the country. Taking that in connection with the Ocoee map, I think the line runs up the creek as we ran it, and as shown on our map.

Q. Have you any doubt about that?

A. No, sir.

Q. From your experience as a surveyor, and your experience in running marked lines in connection with trees that you blocked, have you any doubt that these were the state line trees marked by the commissioners in 1821?

A. I have no doubt of it.

Q. Did you make a careful examination of the trees?

A. I did.

Q. And you have carefully counted the growths on the blocks?

A. Yes, sir. We counted them out there. We couldn't do it out there as well as here, but I was satisfied that they showed that the marks were about 75 years old, and after we had planed them off and counted them here, it convinced me of it.

Q. After you leave the junction of the Fodder Stack and Hangover going eastwardly, which is the main branch of the Hangover?

A. All I know about it is what I could see from the top of Fork Ridge; I never was on that part of the Hangover.

Cross-examination.

By T. E. H. McCroskey:

Q. Before you went to make the survey, you had made up your mind that the state line run up the Slick Rock Creek?

A. I thought it did, judging from a copy of a map of the Ocoee District line.

Q. Some of the trees that are marked on the Slick Rock Creek show 'fore and aft' and some side lines?

A. Yes, sir.

Q. And they are all about the same distance from the Creek. How would you explain why some of the trees are side lines
1188 and some are 'fore and aft'; why they are not all side lines or are not all fore and aft?

A. They couldn't possibly be so if they run a straight line. You would have to make them on different sides; some would be on one side and some on the other.

Q. From No. 1 at the mouth of the Creek to No. 12 you noted 12 marked trees, two only of this number being fore and aft, the balance being all side line trees; how can you explain how that happened?

A. There may be some fore and aft trees that have fallen. We found some dead ones.

Q. Do you think it probable that the fore and aft trees would fall and that those marked as side lines would not?

A. Perhaps some of the side lines are gone. My experience is that you make ten or fifteen side lines to one fore and aft in surveying, and sometimes more than that.

Q. You blocked No. 8, marked side line, opposite the creek; how do you explain that?

A. They ran further away from the creek than anywhere else.

Q. Do you think the creek is the line?

A. Virtually so; I think they run their line outside of the creek. Well, you might call it the creek.

Q. How do you explain the fact that they marked trees sometimes on one side of the creek and sometimes on the other?

A. In some places there is laurel and in some places bluffs that made it almost impossible to pass on that side. They may have dodged off to get around these. The fact remains to my satisfaction that they did it.

Q. It seems that the first three are on one side, and the others on the other?

A. I think that is so, or about all the rest of them are on one side. There was a bluff coming back, and perhaps they crossed on that account.

Q. You crossed backward and forward several times?

A. Yes, sir.

Q. And yet only found the marked line on one side?

A. Yes, sir.

Q. And then after you reach No. 12, probably a mile and a half from the river, you found no marked line for four miles?

A. No, sir.

Q. Why did they not put up some marks along there?

A. I don't know.

Q. As a surveyor, if you had been locating that line, would you have marked it?

1189 A. Yes, sir.

Q. Any other ordinary surveyor would have done so, wouldn't they.

A. I think they would now.

Q. Had you been marking the state line up the creek, if you had been on one side, would you have not continued on that side of the creek?

A. That would depend on the topography of the country.

Q. Is it rough?

A. Very rough.

Q. How long did it take to run from the mouth of the Creek to the Fodder Stack branch?

A. Four days, I think.

Q. The calls of the state line says, to the crossing of the Tennessee River about 65 miles; thence to the main ridge. Now if they had struck the river one-half mile about the mouth of Slick Rock Creek, what would have been the most natural route to go?

A. They are all rough. The most direct would have been up that ridge, if they crossed the river there; but I don't think they did that.

Q. What ridge?

A. Hangover Ridge.

Q. Why do you not think that they crossed at that point?

A. It has been measured and is only 64 1-2 miles, and if you go down one-half mile, you get 65 miles, and if you go the other way, you only get 64 1-2 miles.

Q. How do you know it has been measured and is only 64 1-2 miles?

A. I have been told that by several; I have measured part of it myself.

Q. So all you know is hearsay?

A. Yes, sir; as to that distance.

Q. If the state line marks had actually struck the river one-half mile or more above Slick Rock Creek, would not the most natural crossing be by the Hangover Ridge?

A. Perhaps it would; I think it would be the most direct route to get to the main ridge, but would perhaps not be any very great difference between the two routes in distance.

Q. If you as a surveyor had run up Slick Rock Creek six miles as you think the commissioners did, would you not have mentioned the fact in your report, and would not any surveyor do so?

A. I think I would; but perhaps others would not.

1190 Q. From your experience and observation, would not almost any surveyor do so?

A. I think they would now-a-days.

Q. Would it not have been easy for a surveyor to have followed the ridge up to Hangover, than to have followed the Slick Rock Course?

A. I never went over either and could not say.

Q. Would it not have been easier to have followed up the Hangover Lead to have reached the main ridge than the Slick Rock Creek?

A. I believe it would.

Q. Were you ever on the north side of the river for the purpose of seeing the topography of the country on the south side?

A. No, sir.

Q. So you don't know what the general topography of the country is, approaching from the north side?

A. No, sir; I have never been down to the river on the north side.

Q. Was the state line located by the commissioners along the Slick Rock Ridge to the Fodder Stack Ridge?

A. I think not.

Q. Why do you think so?

A. I think we found it up the Slick Rock Creek.

Q. You located the Slick Rock Creek as the line, from the fact that you found those marks?

A. No; that with the map of the Ocoee District. If I had not found those marks, I would not have thought the map correct.

Q. You know Mr. Wilson, Mr. Muller and Mr. Hale as surveyors?

A. I know Mr. Wilson and Mr. Hale. I do not know Mr. Muller.

Q. Is it not a fact that both Mr. Wilson and Mr. Hale are good surveyors, and well acquainted with mountain lands?

A. I regard them as such.

Q. Are they not above the average surveyors?

A. Yes, sir; they are.

Q. Do you know Mr. Muller's reputation as a surveyor?

A. I do not.

Q. Had you ever any experience in locating state lines before this, and if so, where?

A. I run a state line around the edge of a 20,000 acre tract in North Carolina; and I run a tract for Dan Lawson in Blount County; and I run a line for Col. Sanford—state line.

1191 Q. Were you giving your attention to the state line or more particular to the land you were running out?

A. To the land entirely; I paid no attention to the state line.

Q. Is it not a fact that marked trees on tops of ridges are more easily obliterated by age than in hollows and ravines?

A. I think so; they are more exposed to the weather.

Q. The state line marks north of the river are nearly all gone, are they not?

A. Yes, sir; they are nearly all gone. But there is no dispute about the line along there.

Q. The same condition would exist on the south side of the river on the main heights, would it not?

A. I think so; if it was covered by the same sort of timber.

Q. And it is covered by the same kind of timber, isn't it?

A. No, sir.

Q. What is the difference?

A. There is more spruce pine on the south side than on the north. You rarely see a spruce pine on the north side; spruce pines hold the line better. And on the south side there are a great many.

Q. Would a tree be marked as a fore and aft and side line also?

A. No, sir; it couldn't be done; I never heard of one.

Q. I see No. 41 on your map is noted as side line and as fore and aft. How do you explain that?

A. There are two trees there, and the same number applies to both. One is marked a side line; the other a fore and aft.

Q. As I understand you, after you went some distance up the point of the ridge, after leaving Slick Rock Creek and going up toward Fodder Stack Ridge, you left them?

A. Yes, sir.

Q. And then you met them within one-half mile of Glen Gap?

A. Yes, sir.

Q. And surveyed thence back to Glen Gap and beyond that about a half a mile?

A. Not a half a mile, but I saw the marks there at trees marked 41.

Q. So all the surveying you did on Fodder Stack ridge was less than a mile in distance?

A. Yes, sir.

Q. Did you run on Ford Ridge up from the Junction of Little Slick Rock and the Big Slick Rock?

1192 A. No, we just examined along there for marks; we didn't survey along there.

Q. You found nothing there?

A. We found marks but no state line marks, as we thought.

Q. From where the Big Fodder Stack Branch empties into the Creek, what distance does it run?

A. It makes a circle towards the east.

Q. Where does it head?

A. On the side of the mountain, I suppose.

Q. As a matter of fact, does it not head under the junction of the two ridges?

A. I think it heads more over towards the Hangover Lead.

Q. Then if you was to follow up the creek as a state line, the Hangover would be the main ridge, would it not.

A. I don't know as that would make it a main ridge.

Q. The creek would lead up to the Hangover, would it not? If you follow up the creek the main ridge, would you not approach the Hangover quicker than the other point?

A. I think you would, if you followed up that way.

Redirect examination by Mr. SANFORD:

Q. You mean by that last answer that you think the Slick Rock Creek heads closer to the Hangover lead than to the Junction?

A. I think it does.

Q. Did the fact that you thought before you began your search that the Slick Rock Creek was the state line influence you at all in making your survey, or influence your judgment with reference to the marks on the trees which you have testified about?

A. Not a thing in the world. I thought that was it, and when I found the marks on the trees it confirmed what I thought before.

Q. You had no hide-bound theory which you were trying to establish?

A. No, sir; not a bit of it.

Q. State whether your efforts was to establish a line or to find the true line and report?

A. We agreed to find the true line and to report.

Q. Was that your instructions?

A. Yes, sir.

Q. Was this map made by you jointly?

1193 A. Yes, sir; Mr. Hayes did most of the work, but I called off for him, and assisted him in it.

Q. And it is to be considered as your joint map?

A. Yes, sir.

Q. Does the Hangover Lead come down abruptly to the Tennessee River?

A. I don't know. I did not go right down to the river.

Q. You have stated in your examination in chief that you went to the sourwood in Sourwood Gap, shown on the map of Wilson & Hale, and believed by them to be a state line tree, and have stated that there were marks on said sourwood, but that they were irregular and not of sufficient age for state line marks. Please state what kind of sourwood this was?

A. A double sourwood.

Q. Did you make notes of the marks on this double sourwood at the time you examined it, and have you those notes now?

A. I did, and have the notes here.

Q. Now please state in detail the marks you found on this double sourwood, beginning with the larger fork of the tree?

A. On the south side of the larger fork of the sourwood were two marks horizontal and a space and then three marks below, appearing thus: = On the east side of the tree appears one hack, appearing thus: —: on the north side of the same tree there were two hacks, appearing thus: =: and on the west side of the tree there were no marks.

On the smaller fork of the sourwood on the east side appears five marks, irregular, the upper is a horizontal mark: the second below an oblique to the right, then two horizontal and then an oblique to the left, appearing thus: =: on the north side of the same tree appears two blazes and a little to the right of the blazes, three hacks, appearing thus: = : on the west side there were no marks, and on the south side no marks appeared.

Q. In the call for the state line, as set forth in Section 61 of the Code, this call occurs: "Crossing the Tennessee River at a distance of 65 miles from the beginning; from Tennessee River to the main ridge, and along the extreme height of same to the place where it is called Unacoi or Unaka Mountain." Now please state where, in your opinion, the main ridge referred to in this call begins, basing your opinion upon your examination of the ground, and the aforesaid calls referred to in the Code?

1194 A. My opinion is that it begins at the junction of Hangover and Big Fodder Stack leads. If the Hangover Lead was the main ridge, you would be at it when you crossed the river.

Q. Is the description of the boundary line between Tennessee and North Carolina as set forth in Section 61 of the Code, a meagre or a full description of their survey of said line?

A. It is evidently a very meagre description of said survey.

Q. As I understand from your examination in chief, you assisted in making the survey from the mouth of Slick Rock Creek to the maple, No. 26, and from the spruce pine, No. 38, to the pine past spruce pine No. 41, as shown on the map filed as Exhibit to Mr. Hayes' deposition and made by you. Is this correct?

A. Yes, sir.

Q. Did you examine all of the marks on these trees on this part of the line?

A. Yes, sir.

Q. Did you examine all the marks on all of the trees that were blocked, and also all of the blocks that have been filed as exhibits to Hayes' deposition?

A. I did.

Q. From your experience as a surveyor, and your examination of these trees, have you any doubt but that they are old state line trees, marked as such in the year 1821 by the commissioners?

A. I have no doubt whatever.

And further deponent saith not.

J. C. M. BOGLE.

Bill of Costs.

H. S. Hayes, 266 miles and two days	$16 30
J. C. M. Bogle, 60 miles and two days	6 00
Frantz & Hutchinson, stenos, 49 pp. 300 words each 3 copies	$24 50
J. H. Frantz, N. P. 2 depns	2 00
Total—	

I certify that the foregoing bill of costs has been paid by Lucky, Sanford & Tyson, Counsel for Defendants.

[SEAL.] J. H. FRANTZ,
Notary Public.

I, J. H. Frantz, Notary Public, hereby certify that the foregoing deposition of H. S. Hays, and J. C. M. Bogle were taken before me by the witnesses, and that counsel representing the re-
1195 spective parties in interest personally waived formal action and certificate thereto.

This 17th July, 1897.

[SEAL.] J. H. FRANTZ,
Notary Public.

Endorsed: Filed July 17, 1897. J. T. Carter, Deputy Clerk.

1196 Said witness, H. P. HYDE, being duly sworn, deposed as follows:

I live in Graham County, North Carolina, near Robbinsville, am 41 years of age, and am County Surveyor of that County. I have been surveyor seventeen years. I have had considerable experience surveying mountain land. I have surveyed all around the country. By an act of the last General Assembly of North Carolina, I was appointed with Mr. Lovinggood, County Surveyor of Cherokee County, to run and determine the state line between Tennessee and North Carolina, beginning at the Little Tennessee River and extending southwardly through and beyond the land in dispute in this litigation, to the Tennessee Bald. We ran this line this year beginning in May, 1897. As a result of that survey we determined the state line to begin at the mouth of Slick Rock Creek and thence running up Slick Rock Creek as it meanders to a spruce pine on west of creek, marked on east side, N. C. 5 M., being 5 miles and
1197 101 poles from mouth of the creek, as it meanders, and being at mouth of first branch that heads north of the Big Fodder Stack and at the point of the ridge that leads to said Fodder Stack; thence with said ridge to the top of the stack, and thence up the Fodder Stack lead to the junction with the Hangover Lead, about ½ mile from the Stratton Bald. We found marks on that line that indicated state line marks—two hacks above a blaze, fore and aft trees, and three hacks for side line trees. We cut out a good many of them and counted the growths. I have one of the blocks here; it

came from a hemlock or spruce pine tree that was marked as a fore and aft tree, with two hacks and a blaze below, and which stood 34 poles from the pine on Slick Rock Creek and being on the point of the spur leading up to the ridge. I counted the growths twice—once I made it 76 the other 77. That block shows the hack mark made by the axe on the outside piece, that is, the side above the hack, and also shows the mark where the axe stopped, on the inside piece. I have both pieces, and they fit together just as they were in the tree. I file said block as Exhibit No. 1 to my deposition. I also will file as Exhibit No. 2 to my deposition another block showing 3 hacks, taken from the west side of a side line tree, a hemlock or spruce pine, standing within 5 chains of the creek on the same ridge leading to the Fodder Stack. This block shows the hack marks on the outside and also on the inside. Beginning at the mouth of Slick Rock Creek, and extending to the top of the Fodder Stack we found as I recollect 5 or 6 trees marked as fore and aft trees, some of which we cut into, and many more side line trees, as it was not often that trees stood precisely on top large enough to have been fore and aft trees. Those marked fore and aft trees were all exactly on top of the ridge. We also noted that a considerable number of trees had been blocked, some within a few months and others perhaps a year or more before. All the trees that were blocked and all the fore and aft trees and side line trees seemed to have been made at same time. We compared the marks in the wood and they all seemed to have been made with the same kind of an axe. These marks all seemed to have been of the right age for marks made by commissioners running the state line in 1821. They were all on the very largest trees my observation being that it took the largest trees to hold the hacks.

As a surveyor I had, and now have, no doubt whatever but that this line I have described is the state line as run by the commissioners in 1821, and I so made my report.

1198 I have recently been employed by the defts. in this case to make certain surveys along the Hangover lead line. I was furnished with copies of the field notes of Mr. W. D. Hale, on file in this case, and with copies of so much of the depositions of W. D. Hale, J. K. Wilson and O. W. Muller, as related to their survey of the Hangover Lead line. I file said copies as Exhibits 3 and 4 to my deposition, respectively. I was instructed to follow these surveys in order to find the various trees claimed by these witnesses as being state line trees in order to be able to testify as to their exact appearance. I made an accurate survey for that purpose, beginning Sept. 2, 1897. I followed accurately the courses and distances in the field notes of W. D. Hale, and located exactly the various trees testified to by them. D. K. Blanton and E. A. Shepard were my chain carriers. J. L. Hyde and Mr. Denton were the packers, and cooked for us.

I found the black oak or red oak about ¾ of a mile from the river—we considered it a black oak.

It was marked as follows: On the south side a cross or X. That cross indicates the beginning corner to a tract in North Carolina.

This is frequently done in North Carolina, the X pointing in the direction the land lays.

On the north side we found a block freshly cut out and going nearly to the center and two hacks above this block and still in the bark. If the block had two hacks and a blaze this would have made originally, before the block was cut out, four hacks and a blaze. On the southeast side of the tree there were three hacks—the line leaving the tree runs off in this direction. The tree stood right on top of the ridge. Assuming that the block had two hacks above a blaze then the marks originally on the tree would not have been proper marks to indicate either a fore and aft or a side line tree on the state line.

I have examined a block now shown me, marked Exhibit A to the deposition of W. D. Hale and can see no marks of axe or indications of a hack on the inside of wood, though there are two scars on the wood. If the piece were well preserved, then if there had been hack marks they ought to show as in the block filed Exhibit No. 1 to my deposition. If there had been hack marks then unless there had been decay from some defect, the marks where the axe stopped should have shown on the corresponding piece inside of the scar, which do not seem to have been filed. We found pieces of wood on the ground where the block had been split up and we searched these pieces carefully to see if we could find any
1199 hack marks, but could not find any. The scars on the outside bark of this block seem to have been made at some time as the marks now on the tree and not cut out, all of which seemed to be of same dates.

The double sourwood in gap a mile from the river has two prongs, the larger bends to the east and I call it the east prong; the smaller bows to the west and I call it the west prong. The smaller or west prong is marked as follows. The east side is marked with a blaze above three hacks; the blaze a slight blaze, and the blaze seems to have been made with two strokes, of the axe, running together. The north side has a fresh block cut out to the hollow. There are no corresponding marks on the south side. The west prong is small, about 9 or 10 inches in diameter.

The larger or east prong is marked with two hacks on the north side; on the south side is two hacks and a blaze, the upper hack made with two strokes of the axe running together; the west side is hollow—east side one hack and fresher than others.

All the other marks on the two prongs of the sourwood seemed to be about the same age, and made with the same axe.

There is an old trail four feet west of this double sourwood. There is also indications of another old trail on the east side just above, but not so plain as the one on the west. This old trail goes down off of the mountain on each side crossing it. We followed this old trail for some distance down on east side of the mountain as it came up and as it went off. It had many marks; some trees only one blaze, some one hack and a blaze, some two hacks and a blaze, some three hacks and a blaze. Some of the trees had two

hacks and a blaze like the sourwood. The marks on the trail looked to be about the same age as the marks on the sourwood.

I have examined the block here shown marked Exhibit B to the deposition of W. D. Hale, and it doesn't look to me like a state line mark. The lower hack has two marks, making three hacks in all, and there is some indication of a blaze, but that is hard to tell. The two hacks are also too close together, being within an inch or two together, while the hacks on state line trees are 7 or 8 inches apart. Also, if it was a fore and aft tree on state line, it should have similar marks leading off in the opposite direction as the line ran off. It is not possible to tell definitely the age of the marks.

The outward indications on this block indicate the marks are
1200 the same age as the other marks on the sourwood. I further-
more think the west prongs very small to have been marked at all in 1821.

Assuming that this last block came from the small prong of the sourwood, there are no marks on the double sourwood proper to indicate either a fore and aft tree or side line tree on the state line. The marks simply indicate general chopping on the trees and do not indicate either land marks or state line marks.

The hacks on the black oak above spoken of indicate a corner for land in North Carolina.

I found the small hickory noted by Hale in his field notes as 1 ch. west of line, running from his station 114 to 115.

On the east side was marked one plain hack and the other dim as if the lower hack had scalped out. I considered it two hacks and not a hack and a blaze. I could see no indication of a hack above this. I considered these hacks for line of private land. The hickory was east of the crest of the ridge and was marked on the east side. It was tolerably old tree, but I did not consider it old enough to have been a state line tree in 1821, nor were the marks old enough for state line marks in my judgment. It was a tolerably small hickory it seemed to have age, but not age enough.

This hickory is a line of North Carolina entry No. 920 (then Cherokee county) which now belongs to the Thomas heirs. I resurveyed this entry about 8 or 9 years ago. I had my field notes with me on my last trip, but I have not got them with me to-day. This entry was made in 1853 or 1854, calls for beginning at the mouth of Slick Rock creek at the state line. It lies on both sides of Hangover lead for about two miles up the divide. I don't remember exactly where it crosses the divide on the extreme southern boundary line; it crosses it several times before that. In starting from the black oak corner of this entry near the Slick Rock Gap, which was standing when I made my survey and is still standing, and following the course and distance of that entry, it passes within 10 feet on the east of the hickory mentioned. The two hacks on the right side of the hickory are proper side line marks for this entry and are rightly located as the line of the entry runs. The trees along the line of the entry were well marked, and the age of the marks on the hickory corresponded with the other marked trees of this entry.

As a surveyor, I have no doubt about this hickory being a side line tree of that entry No. 920. I found the marks of entry both before and after reaching the hickory.

1201 Going back to the black oak, about ¾ of mile from river first mentioned, about 2 or 3 chains to the southeast, I noticed a white oak marked as a North Carolina line, but I didn't follow it any further to see how far this North Carolina line ran. This white oak is down easterly from the top of the ridge.

The small hickory I have testified about is the same one that Mr. Hale describes in his original deposition as being 1 mile and 198 chains from the river.

I found and examined all the other trees mentioned by Hale, Wilson and Muller, in the copy of their depositions filed as Exhibit No. 1 to my deposition, locating them by the depositions and Hale's field notes. I found no trees showing state line marks either fore and aft or side line, unless perhaps a water oak which Hale describes in his field notes as a small Mt. oak at end of call—running from station 263 to 264, some people call it a water oak and some a mountain oak; my notes are as follows: "Mountain oak marked two hacks above blaze on west side; east prong split off and block taken out of prong—prong split off." We examined the block and could find scars but no hacks. The tree was thrifty and seemed to have been marked when young, but the marks were not old enough. This tree was not half old enough for a state line mark.

In running the Hangover Lead from river to junction with Fodder Stack Lead we went through some very rich gaps and found many very large trees, poplar, chestnut oak, mountain oak and chestnut and various other kinds—some of them were very large; some three or four feet in diameter; plenty of them three feet through. Some of these trees were right on top of the ridge, and many of them from two to ten feet from the top. I saw none of them marked with state line marks though we looked at them very carefully. Some of them had fresh marks, a hack, blaze and hack, some of which we cut out and found to be about 14 years old. Those trees were old enough to have been there in 1821, some of them being at least 200 years old. These trees were of suitable character and suitable to have been marked, and were such trees as would naturally have been marked by the commissioners if they had run the line up there.

Referring again to the ridge leading up from Slick Rock creek to the Big Fodder Stack, the trail which runs up this ridge does not follow the crest of the ridge all the way up, but runs off to one side in several places, and for some distance. This trail does not follow the state line marks, and some of the state line trees I have testified to were found in places where the trail did not run at all.

1202 Questions by Capt. COOPER:

I have surveyed by order of court North Carolina Entry No. 4455, grant No. 2969; I found two corners in running up the Hangover lead—one was a mountain oak on top of the Hangover

Divide, between the Hao and the Bald, standing near the junction of the ridge between Little and Big Santeetla. Then I ran from this mount. oak N. 40 east 320 poles to Spanish oak on top of said divide and found that also. The balance of corners were back on Santeetla. This entry was made in 1853, and surveyed April 11, 1856. I surveyed it about 3 years ago. The Spanish oak was a mile nearer to the Hao than the Spanish oak.

Entry No. 1035, grant No. 2336, filed as Exhibit H to deposition of H. S. Hayes, calls for these 2 corners of entry No. 4455, and runs with it the 1 mile between.

According to grants before me now 2336 and No. 4455, grant No. 2336 covers the land between Hangover Lead and Big Fodder Stack, running with the ridge and Slick Rock Creek, the state line, to the river.

From all my information, prior to this suit, including reading (?) land papers and North Carolina Code of 1821, I understood that the state line ran up the ridge between Little Slick Rock and Slick Rock, but when I ran the line this spring I became thoroughly convinced that it ran up Slick Rock creek, as I first testified in this deposition.

Questions by SANFORD:

My examination of the line run by Hale, Wilson and Muller on Hangover Lead in no way caused me to doubt the correctness of my previous conclusion that the state line ran up Slick Rock creek as I have stated.

Cross-examination by Maj. T. E. H. McCROSKEY:

I have examined map filed as Exhibit A to deposition of W. D. Hale, now shown me. It presents a general outline of the Slick Rock Creek Basin. About 10 or 12 years ago to hunt the ridge marked on Hale's map as Slick Rock Ridge for the state line. It was my impression before that this was the true state line. It was not then generally claimed by North Carolinians, but Capt. Evans had a North Carolina entry embracing this territory. I never at any other time made any other survey to locate the state line along Fodder Stack Lead until this spring. In surveying up Slick Rock creek we follow all way up creek till we started up ridge. Sometimes we found trees marked a little to one side of creek. We
1203 could follow near the bank all the way, but in some places, on account of falls in the creek had to turn aside a little, perhaps 10 or 12 feet. I took the bearings of the creek. There were some places, at the Falls of the Creek, where it was impossible to get along without wading the creek, or at the falls in some places getting on either side.

The fore and aft marked trees along creek were below the mouth of Little Slick Rock. The side line trees marked with three hacks, we found both above and below the mouth of Little Slick Rock, until we got nearly to the point of the ridge. Between the mouth of Little Slick Rock and the ridge we found half a dozen or perhaps

more marked trees, but it was not marked as well above Little Slick Rock as it was below.

We blocked a birch above mouth of Little Slick Rock about ½ mile, on east side of creek; I have the block here in my saddle pockets. The marks showed all right, but I couldn't count the growths. It was 120 poles above the mouth of Little Slick Rock.

(Witness here hands block to counsel for complainant.)

We found two hacks and a blaze in this birch. There were two birches marked about there. This birch stood about a rod from the creek. It was marked fore and aft on both sides.

I file said block as Exhibit No. 5 to my deposition.

We only cut out one hack—the others are still on the tree, and when we cut it out, as the sap was up, the bark slipped off. Most of the marked trees above the crossing of Tallassee Trail were found on east side of creek, though a few were on the west side. Below the Tallassee Trail we found them more on both sides.

Some of the marks faced the creek and some were on trees standing near the creek and facing from the creek. All the trees we found marked stood near the creek; we searched for some distance on both sides; one or two marked with two hacks and a blaze were facing from the creek.

It is very rough up the creek. We began at the mouth of Slick Rock creek. Before beginning we made preliminary investigations, searching the points of all ridges on both sides for state line marks. Before we went down to the creek at all, we searched the Hangover Lead for state line marks. I had heard of Bogle and Hayes' Survey before I started, and had heard they ran up Slick Rock creek, though I had not heard they located the state line then, though I heard that they claimed the state line was there.

1204 I have never surveyed the state line to the southwest of intersection of Fodder Stack and Hangover leads, though I have surveyed there. I never had experience in locating state lines except as shown in this deposition.

I have the calls of my survey of state line running up Slick Rock creek, and I here show same to counsel for compl't. In said calls of survey I did not note any trees; I only noted passing the mouth of the various creeks, trails and other similar prominent points. In this state it is customary for surveyors, in making surveys and in running up creeks, to note such points, and that is all we are required to do here. I don't know as to the custom of other states. If the commissioners in locating Tennessee line ran down river ½ mile to mouth of Slick Rock and thence up Slick Rock creek 5 miles I can not explain why they did not note it. If I had been running the line and had struck any stream I would have mentioned it.

Re-examination by SANFORD:

We were four days in running along the Hangover Lead on my September trip. In running up Slick Rock creek we found marked state line trees up to within ¾ of a mile or a mile of the foot of the ridge leading up to the Fodder Stack, but for that distance it was

exceedingly rough and we didn't find any more marked trees until we got to the foot of the ridge.

Questions by Capt. COOPER:

Hale's map is incorrect in giving the outlines of the creek from mouth of Little Slick Rock up to the foot of ridge leading to the Fodder Stack, and it leaves out this ridge altogether.

The bearings of the crest of Hangover Lead as laid down on Hale's map, from opposite the mouth of Little Slick Rock creek, are slightly southwest.

The Hayes and Bogle map seems to me to be correct, and the ridge seems to be correctly laid down. There are notable points along the Hangover Lead such as the Eagle's rock, a very high rock and if I, as a surveyor, had run the state line in 1821 on this lead I would in my description of the line have noted these conspicuous points. I would also have mentioned any notable point like a Bald. If I had been running this Hangover Lead I would not have passed over any part of the Fodder Stack Lead as it runs right by the junction with the Fodder Stack.

1205 The black oak that I have mentioned as a corner of Entry 920 is the black Hale mentions in his deposition as a black oak 1 mile and 63 chains from the river, and marked as a corner. It is still standing, it is marked with three hacks on two sides as the lines of No. 920 come up to it and leave it. These are the marks for a North Carolina corner. It had the original marks when I surveyed it, the same apparent age as other marks of 920, and I re-marked it then. It has no other marks.

Filed Sept. 21, 1897. J. T. Carter, deputy clerk.

1205½ And afterwards, to wit: on Sept. 30, 1897, certain depositions of H. P. Hyde and Reuben Carver (re-taken) and D. W. Belding, R. N. Archer, Edward T. Sanford and L. D. Tyson were filed in the clerk's office of said court, which said depositions are clothed in the words and figures following, to wit:

In U. S. Circuit Court, at Knoxville.

CHAS. HEBARD
vs.
D. W. BELDING et al.

Depositions of H. P. Hyde and Reuben Carver, Retaken, and D. W. Belding, R. N. Archer, Edward T. Sanford & L. D. Tyson, Taken by Consent September 28th, 1897, at the Offices of Lucky, Sanford & Tyson, Knoxville, Tenn., in Presence of Major T. S. Webb and T. E. H. McCroskey, Sols. for Complt., and Edward T. Sanford and C. E. Lucky, Sols. for All Defts. Except J. W. Cooper.

1206 Said witness, H. P. HYDE, of lawful age, being duly sworn deposed as follows:

Q. 1. Are you the same H. P. Hyde whose deposition has been formerly taken in this case?

A. I am.

Q. 2. Have you, since your former deposition, again at the instance of the defendants visited the land in dispute for the purpose of making further observations as to the state line?

A. Yes, sir.

Q. 3. Have you on this second survey been north of the river searching for state line marks?

A. Yes, sir.

Q. 4. Did you find the state line mark north of the river along the line followed by Hale, Wilson and Muller described in their depositions, and in Hale's field notes, for some distance north of the river?

A. Yes, sir, I did.

Q. 5. About how far did you go?

A. I ran the line from the turnpike road mentioned in Hale's field notes to Tennessee river.

Q. 6. About how many state line trees did you observe?

A. I found good many, about 20 or 25 I suppose.

Q. 7. Did you block any tree on that line north of the river?

A. Yes, sir, one.

Q. 8. What tree is that, and is it spoken of in Hale's field notes?

A. Yes; it is the spruce pine or hemlock standing 10 poles or 5 chains north of the river.

Q. 9. Will you please produce said block and file it as Exhibit No. 6 to your deposition?

A. I so file it.

Q. 10. How is the tree marked?

A. With two hacks above a blaze, as fore and aft, on the north and south side.

Q. 11. Does that show the mark of the axe in the bark and in the wood?

A. It shows it very plainly in the bark and also shows it in the wood.

Q. 12. Did you count the growth in that block to see the number of years since the tree was marked?

A. Yes, sir, twice, and counted 76 and 77.

Q. 13. Please state whether or not the marks on the state line tree that you found north of the river along the line followed by Hale, Wilson and Muller were alike or were unlike the marks on

1207 the line running up Slick Rock Creek, Fodder Stack Ridge and the Fodder Stack Lead south of the river, which you have testified to in your former examination as being the marked state line south of the river?

A. They were like the marks that I traced south of the river, that is had same appearance and seemed to have been made with the same sized axe.

Q. 14. Did they seem to be of the same or of a different age?

A. Same age and appearance.

Q. 15. How did they resemble marks south of the river with reference to distance between the marks?

A. They were same apparently, six or seven inches apart each mark regularly.

Q. 16. State whether or not your conclusion as a surveyor would be and is that the marked line north of the river was made at the same time and by the same parties as the Slick Rock creek line you have testified about south of the river, or different?

A. I think they were, and made on the same survey. That is my conclusion as a surveyor.

Q. 17. How far is it from the spruce pine or hemlock on the north bank of the river where this line reaches the river, to a point on the north bank of the river opposite Slick Rock creek?

A. 89 chains.

Q. 18. How wide is the river at mouth of Slick Rock creek.

A. I think about 10 or 12 chains.

Q. 19. Is there any old trees standing near mouth of Slick Rock Creek, which is in such condition that the marks can not be counted?

A. There is one large spruce or white pine, I do not remember which, but think it a white pine, that stands about 3 rods below the mouth of Slick Rock creek on the south bank of river. It has been burned considerably on the east side of the tree, so much so I could not distinguish any marks; have examined it to see if there were marks.

Q. 20. Is there any indication of an old trail running up Slick Rock creek from its mouth?

A. No, sir; none that I ever found running up the creek.

Q. 21. Is there any branch that runs into Slick Rock creek on the right hand side as you go up the creek, just before or at the point where the state line as you ran it leaves Slick Rock creek and runs up Fodder Stack Ridge to Fodder Stack Lead?

A. Yes, there is. We leave Slick Rock creek at mouth of this branch, and the branch is on right hand side all the way as

1208 you go up to Fodder Stack Lead. It heads up near the top of the lead.

Q. 22. Please examine the certified copy of Range 6, E. Frac. Township 2 N. of Oconee District, filed as exhibit A to deposition of

T. E. H. McCroskey in this cause, which is here shown you and, assuming that the line running southwest on said map from the intersection of fractional townships 23 and 26 on said map is the line running up Fodder Stack Ridge to Fodder Stack Lead, state whether or not the creek shown on said map would indicate with substantial correctness the location of said branch?

A. Yes, that is exactly as we found it, on the right hand side of the ridge as we go up.

Q. 23. Will you file as Exhibit No. 7 to your deposition a certified copy of Act of North Carolina General Assembly passed March 1, '97, providing for marking the state line between Tennessee and North Carolina?

A. I so file it.

Q. 24. Will you please file as Exhibit No. 8 to your deposition certified copy of the report of H. P. Hyde and F. M. Lovingood on such survey?

A. I do.

Q. 25. Please state whether or not you are the same H. P. Hyde that made that report?

A. I am.

Q. 26. Is this a report of the survey about which you testified in your former examination?

A. It is.

Q. 27. At the time you ran and marked this line and made your report, state whether or not you had been employed by defts. in this case to run the line, or whether you were acting solely in your official capacity as surveyor of N. C.?

A. I was acting solely in my official capacity and had not been employed by the defts. I had previously worked for the Beldings in other matters.

Q. 28. Do you know the reputation of H. S. Hayes and J. C. M. Bogle as surveyors?

A. I know them by reputation.

Q. 29. Is their reputation that of good and accurate surveyors or to the contrary?

A. Their reputation is that of good surveyors.

Q. 30. What, if any, is the general custom of surveyors in running lines as to marking fore and aft trees on one or both sides?

A. It is the general custom to mark them on both sides.

Q. 31. Have you, since your former examination, again visited the black oak on Hangover Lead, standing about ¾ mile
1209 from river from which Mr. Hale cut the block filed as Exhibit A to his deposition?

A. I have.

Q. 32. Since looking at the tree again, is there anything in your former deposition that you wish to correct?

A. There is. As to the appearance of the hack on the bark of Exhibit A. Those hacks appear to be much older on this block than those that are still on the tree. The scars on this block do not show the cut of the axe.

Q. 33. Now, taking up that block in connection with the place left in the tree and the splinters lying around, have you made any fur-

ther investigations with reference to the question as to whether or not those were state line marks and if so, give your conclusions?

A. My general conclusion was that it was not state line marks, the same as before.

Q. 34. First, taking outer bark, does that show state line marks, and give your reasons?

A. This block I hold in my hand. Exhibit A, has appearance of couple of old scars which may have been caused by cut of an axe, but I can't see the cut of the axe in the pores of the bark. It seems that if they have ever been here they have been cut off in taking out the block.

Q. 35. Is there any marks on that bark on the block that indicate to you as a surveyor a chop or hack at the upper or flat end?

A. No, sir.

Q. 36. Is there anything about the mark on the upper or flat end to show it was not made by chop of axe, and if so, what is it?

A. It indicates a scar cat faced termed by us, in the bark caused by wood worm or some other defect.

Q. 37. What kind of scar with reference to the edge does the chop or hack of axe make?

A. It makes a smooth cut in the bark or wood.

Q. 38. Can you make an irregular chop with an axe?

A. Not with one stroke of an axe.

Q. 39. Have you examined the various blocks filed as Exhibits by Mr. Hale to his deposition?

A. Yes, sir.

Q. 40. Does it show smooth cuts in bark?

A. Some of them do and some not so plain.

Q. 41. State whether this block Exhibit A shows in bark that kind of cut of an axe?

A. It does not.

Q. 42. Did you examine this black oak to see whether or not there were any other marks like that on the tree on the bark?

1210 A. Yes, I examined it to see if there were any other cat faces or defects in the bark.

Q. 43. State whether or not you found any other cat faces or defects in bark?

A. I did; good many—as many as half dozen.

Q. 44. Were they same or different as this cat face on the upper part of Exhibit A?

A. I can't say they were the same but they had same appearance as this block does at present.

Q. 45. State whether or not when a chop is made in tree with an axe, the piece of wood on the outside ought to show and usually shows the chop? That is to say, whether on the block of wood taken out above the mark there ought to be a mark on inside of block corresponding to chop and just above where chop was, and if you can illustrate any other blocks filed as exhibits, please do so?

A. It does when the tree is sound and hacks preserved. I would like to illustrate by Exhibit C of Hayes—that shows the slivers of the wood where the axe stopped, growing up into the hack.

Q. 46. Does the inside of Block Exhibit A show any such mark of the chop?

A. No, sir, it does not.

Q. 47. Taking up the scar itself, is there anything about those scars that would indicate whether or not they were made by chops of axe, and please illustrate by reference to other exhibits?

A. It does not indicate it was made by axe; with the cut of an axe the scar on the inside of the block next to where the cut stops in the wood doesn't show the cut of an axe in the block but does in the piece next to where the axe stops. I will illustrate.

Q. 48. Do you mean to say in this particular Exhibit A it shows where the cut of axe stops?

A. It does not show that.

Q. 49. Then, as I understand you, you mean by your former answers that the marks on the piece corresponding to the block, if it had been made by chop of axe, ought to show where the axe stopped but that does not appear in this block?

A. Yes, sir, that it does not appear, for the piece is not here.

Q. 50. Then, as I understand you, there should be two blocks for every cut; one outside of the cut, and the other the wood inside of the cut, and on the outside block showing the growth subsequent to the cut there ought to be mark on inside showing
1211 sliver of the cut, and then on the outside of the inside piece there ought to be mark showing where the axe stopped in the wood?

A. Yes, sir.

Q. 51. Now this block Exhibit A, is only outside block, and the corresponding inside block is not filed?

A. Yes, sir.

Q. 52. Speaking of this scar on the inside of Exhibit A, is there anything about those scars that would indicate that they were made by chop or hack of axe?

A. There is not; there is no appearance of the cut of axe there.

Q. 53. In what way do cracks or crevices in these scars run?

A. Up and down block.

Q. 54. At what angle are hacks or chops made in tree?

A. Usually at angle of about 45 degrees.

Q. 55. Are they ever made vertically?

A. I never seen any line marks made that way.

Q. 56. When a scar is made inside of tree caused by growing up around hack or chop, what will be the angle of that crack or crevice in the scar?

A. Same angle as the hack on the outside—that is usually about 45 degrees. I will illustrate it by Exhibit 2 to my former deposition. I split this open at the hack to-day and it shows the slivers in outside piece as well as hack preserved in the inside piece running crosswise the block at angle; the lower hack don't show the slivers growing in the hack as the upper two hacks.

Q. 57. Is there any reason for this in this particular case?

A. It seems to have been caused by axe glancing and bursting slivers in the wood.

Q. 58. Can you see the marks of the cut of the axe in the inside piece of the lower hack?

A. Yes, sir. There is small sliver growing in the outside piece corresponding to where the hack is. It don't show plain axe cut on inside surface of outside piece, of the lower hack. There is growth of rosin in this lower hack and caused it to heal in growing up without showing the marks.

Q. 59. When was your last examination of these trees made?

A. 24 and 25 of this month.

Q. 60. What sort of tree was this black oak with reference to soundness or unsoundness?

Q. There was good many defects in tree where block was cut out.

1212 Q. 61. What do you mean by where block was cut out?

A. In the tree as well as piece on the ground where it was blocked on north side.

Q. 62. Had more wood been cut out than simply this block?

A. Yes, this is small amount of the wood that has been cut out.

Q. 63. Were there any pieces lying around the foot of the tree that has been recently cut out?

A. Yes, there were number of pieces cut out and lying around at the foot of the tree.

Q. 64. Did you examine these pieces?

A. I did.

Q. 65. What was their condition with reference to defects?

A. I found defects that had appearance of what we call wood work as appears on this block Exhibit A and also some that have same appearance of this block on inside, that is with same kind of scar.

Q. 66. Did you examine these pieces carefully to see if you could find any marks of axe?

A. Yes, sir, and failed to find any cut of axe.

Q. 67. Did you examine the face of the wood that was left in the tree after taking out this block?

A. I did.

Q. 68. Did you find any marks of axe in that?

A. Nothing only the fresh mark where block was cut out.

Q. 69. I'll ask you whether or not when hacks or chops are made in the tree and when you block that tree afterwards, the inside of block beyond the cut ought to show on its face the marks of the cut?

A. It is owing to condition of tree; if it is a preserved tree and not decayed it does.

Q. 70. Does that show in these various other blocks you have referred to?

A. Yes, sir.

Q. 71. Did the marks on this black oak seem to have been made with the same sized axe as the state line marks you have described?

A. It is made with smaller axe from the appearance of the hacks in the bark that are now in the black oak tree?

Q. 72. Who was with you on your last survey since your former deposition was taken?

A. Mr. Reuben Carver.

Q. 73. Did either he or you cut any other blocks from this black oak to show any similar cat faces to this on Exhibit A, and if so, what became of it?

1213 A. No, sir, we did not cut any blocks from this black oak tree. We picked up a block on ground at root of the black oak tree that resembled the appearance of top scar on the inside in Exhibit A to Mr. Hale's deposition. We carried the block with us to down near Tennessee river on north side and hid it until we traced the line down to Tenn. river, and as we came out we forgot the block and left it there.

Q. 74. Did you visit again the hickory referred to in your deposition as side line tree to Entry No. 920?

A. Yes, sir.

Q. 75. Did you again take the course of any lines on No. 920 running by that hickory to see whether you were right in your opinion that it was side line tree of 920, and with what result?

A. Yes, sir, we traced the line from the hickory some distance up the ridge on east side of slope of ridge, and found it marked with marks as old in appearance as the marks on the hickory and the same kind of marks, and marks going in same direction. That is line was running up the mountain and the slant of the axe making the cut on hickory was made in same direction as the slant of the axe in cutting the marks on the line of 920.

Q. 76. Does the hickory stand on the east side of the ridge, and on what side is it marked?

A. It stands on east side and is marked on east side.

Q. 77. Did you run this tract of land from copy of entry or from copy of grant, and if from grant, what is its number?

A. I ran No. 920 from Grant—number of grant as appears here is 8234.

Q. 78. When you say "as appears here," do you mean as appears in the certified copy you have in your hand?

A. Yes, sir.

Q. 79. You ran from calls of grant?

A. Yes, sir, had grant in my possession when I ran it.

Q. 80. Will you file said certified copy of the grant as Exhibit No. 9 to your deposition?

A. I file same as said Exhibit.

Q. 81. Did you go again to the chestnut oak stump testified to by Hale, Wilson and Muller in their original deposition?

A. Yes, sir, I did.

Q. 82. Is that the chestnut oak stump 3¼ miles from the river?

A. Yes, sir.

Q. 83. On what side of the ridge does that chestnut oak stump stand?

1214 A. On east side.

Q. 84. Did you examine that stump carefully?

A. Yes, sir.

Q. 85. Did you find two hacks and blaze on that stump?

A. No, sir.

Q. 86. Did you find any state line marks on that stump?

A. No.

Q. 87. Did you cut out piece of the bark of that chestnut oak stump that contained every possible indication of the mark?

A. I did not, but Mr. Reuben Carver did.

Q. 88. Is it here present in its original condition as it was cut out?

A. I have it here just as it was cut from tree.

Q. 89. Will you file it as Exhibit No. 10 to your deposition?

A. I so file it.

Q. 90. What are the marks on that chestnut oak stump, or are there any marks or indications of marks?

A. There are no marks. There is an old scar, but no marks of the cut of axe.

Q. 91. What does that scar indicate to your mind as surveyor?

A. It indicated a scar caused by falling timber, may have been caused by limb on lap of tree rubbing against outside bark, as sometimes they move and rub another tree.

Q. 92. Does it indicate a state line mark in any way?

A. It does not.

Q. 93. Did you survey for J. W. Cooper in 1883 Entry No. 418 N. C. beginning at mouth of Slick Rock creek on state line, and lying between Slick Rock creek and the Hangover lead?

A. Yes, sir, I surveyed that.

Q. 94. Will you file your original certificate of survey and grant No. 144 based thereon as Exhibit No. 11 to your deposition?

A. I so file it.

Q. 95. Does this grant lie east of Slick Rock creek?

A. Lies south east from mouth of Slick Rock creek.

Q. 96. Do you remember course of Slick Rock creek?

A. It is something east of south; I remember in running the line we ran along the body of creek for something like 10 chains and then our line took us east of creek.

Q. 97. Did your last survey give you any reason to doubt the correctness of your conclusion that the state line ran up Slick Rock creek, as you stated before?

1215 A. None whatever.

Q. 98. Did you examine the sourwood?

A. Yes, sir.

Q. 99. Did you find anything to change your former opinion?

A. No, sir.

Q. 100. Did the marks on the sourwood seem to have been made with the same kind of axe as those on the state line trees?

A. Not the same width, but larger than the marks on the black oak.

Q. 101. Please examine the book of field notes, Exhibit B, to deposition of W. D. Hale in this cause, and from said book calculate accurately the distance as shown by said field notes from 61 mile tree on state line mentioned on page 8, to the locust stump described as 62 mile tree on bottom of page 9, thence to the station 74 on page 18 said to be at white oak the 64 mile tree, and thence to river

bank at the spruce pine or hemlock, where Hale and Wilson's line struck the river on the north side.

A. I have done so; the distances are as follows: From locust 61 mile tree to locust stump 62 mile tree 179 chains; from locust stump to point 3 4-10 chains beyond station 74, described as probably the white oak 64 mile tree, 331.5 chains; and from this point to river 54.5 chains. This makes total distance according to Hale's notes from locust 61 mile tree to river on Hale and Wilson's line, to be 565 chains or 3 and 85-100 miles, being trifle over 3 and ½ miles.

Q. 102. Please state whether the fore and aft state line trees that you found marked on the north of the river, were marked on one side only or on both sides in the direction the line approached and left the tree?

A. They were all marked on both sides that we found, I think.

Q. 103. Please state whether or not the state line as described in the report of Mr. Lovingood and yourself which you have filed as Exhibit 8 to your deposition corresponds with or differs from the state line running up Slick Rock creek, up Fodder Stack Ridge and thence along Fodder Stack Lead as you testified in your former deposition.

A. It is the same line testified to in my former deposition.

Q. 104. What do the marks on the black oak block, Exhibit A to Hale's deposition, taken in connection with the other indications and marks on the tree, indicate to your mind as a surveyor?

1216 A. It doesn't indicate any plan line marks at all, but indicates scars caused by some defects in bark or wood; I see no axe cuts about the piece at all.

Witness, H. P. Hyde, cross-examined by Solicitor for complainant:

Q. 1. How old are you?

A. 41 years old.

Q. 2. How long have you been a surveyor?

A. 17 years this November.

Q. 3. When was the first time that you made any survey on the state line in the locality in question?

A. The first time I made survey on the state line was last spring; I searched for the *land* some 8 or 10 years ago with Capt. Everett.

Q. 4. At what point did you search for the line at that time?

A. From the mouth of Slick Rock Creek up the dividing ridge west of Little and Big Slick Rock round by Little Fodder Stack.

Q. 5. At that time did you locate the state line or dividing ridge and the Little Fodder Stack Lead?

A. No, sir, I did not.

Q. 6. Did you locate it at any place at that time?

A. Not to my satisfaction. I found marks up Big Stack Lead that I supposed to be state line marks; I was at that time running entry for Capt. Everett.

Q. 7. Did you locate that entry?

A. I located the entry.

Q. 8. Was it a Tennessee entry or North Carolina entry?

A. North Carolina entry.

Q. 9. Does that entry call for the state line?

A. I ran agreeably with the calls of the warrant of survey and the instructions of Capt. Everett.

Q. 10. The question was, did the entry — for the state line?

A. I don't remember as to warrant calling for state line. Beginning was specific calling for certain directions.

Q. 11. Did the entry call for state line at beginning or at any other point in the call?

A. I can't remember all of the exact calls in the location.

Q. 12. Did you locate that entry on what you then understood to be the state line?

1217 A. I did not know at that time where the state line was; I located the entry where I was instructed to locate it.

Q. 13. Did your survey or notes call for the state line at any point?

A. I don't remember as to that.

Q. 14. Did you locate that entry along the Fodder Stack Lead?

A. Yes, sir, that is my recollection that we ran up the Fodder Stack Lead.

Q. 15. Then the Fodder Stack was one of the lines of the entry?

A. Yes, sir, that is my recollection.

Q. 16. Then the entry ran from Fodder Stack Lead eastwardly toward Hangover?

A. No, sir; we ran westwardly with the divide leading on by John Stratton meadows.

Q. 17. Then you located this N. C. entry on the west side of Hangover Lead?

A. We ran west of Hangover Lead to junction of Fodder Stack Lead.

Q. 18. Then you located this entry west of Fodder Stack Lead, did you not?

A. I ran up divide between Slick Rock Creek and the waters running back into Tennessee, around head of Little Slick Rock Creek, there may be some point that would be west or northwest of Fodder Stack.

Q. 19. You have stated that one line of the entry and your survey was top of Fodder Stack Lead. Now did your entry lie on east side or west side of this line?

A. It is east or northeast.

Q. 20. Was this entry north or south of Little Slick Rock Creek?

A. This entry embraced all the land on Little Slick Rock Creek.

Q. 21. Did this entry lie north or south of the Big Stack Gap branch?

A. It embraced all the land on the waters of Big Slick Rock.

Q. 22. Then it embraced the Big Stack Branch, did it not?

A. That is one of the tributaries of Big Slick Rock, is it not; if so, it embraced it.

Q. 23. How many acres were there in that entry?

A. The boundary I ran out was something like 100,000 acres it ran on to Johnson Bald in Cherokee County.

Q. 24. Then the line of that entry ran along Fodder Stack Lead up the main mountain?

1218 A. Yes, sir.

Q. 25. It included Hangover Mountain did it not?

A. Yes, sir, everything back to the river.

Q. 26. What county of N. C. are you the surveyor of?

A. Graham County.

Q. 27. Graham County lies adjoining the lands in dispute, does it not?

A. Yes, sir.

Q. 28. Isn't it a fact that surveyors mark a fore and aft tree on the side where the line they are running strikes that tree and then mark it on the other side where that line is run through the tree would come out on the other side?

A. Yes, sir, it should be marked that way; that is the way I mark them.

Q. 29. The hemlock tree on the north bank of Tennessee River and which you blocked was marked that way, was it not?

A. Yes, sir; on the north side and the south side; there may have been a variance of degree but on the degree the line ran down.

Q. 30. If the line had been continued southwardly from that tree, across the river, it never could have reached the mouth of Slick Rock Creek, could it?

A. Owing to the course that you had gone when you crossed the river, but would not have reached the creek continuing the same direction that the fore and aft tree was marked.

Q. 31. Isn't it a fact that if this line had been continued southwardly in the same direction that said fore and aft tree was marked, that it would have gone in a general direction towards the black oak blocked by Hale?

A. It would have gone in the general direction of the Hangover Lead.

Q. 32. This black oak referred to is on the Hangover Lead, isn't it?

A. Yes, sir.

Q. 33. If you had been running the state line under the calls given in the Code of Tennessee and North Carolina, would you have turned down the river at the fore and aft hemlock to the mouth of Slick Rock Creek or would you have continued the course indicated by the fore and aft tree to the top of Hangover Lead?

A. I would have went from a point on the north bank of the river near the hemlock to connect with the original marked line where it could be found.

Q. 34. If you had been running the line as the state commissioners were and before any marks had been made, would you

1219 run the call from the hemlock fore and aft tree to the top of Hangover Lead, or would you have run it down the river to the mouth of Slick Rock Creek?

A. I can't say how I would have run it if I had been one of the commissioners.

Q. 35. Now taking the calls as reported by those commissioners

and as found in the code and assume that there are no state line marks either on Hangover or on Slick Rock Creek, or on Fodder Stack; now, upon that assumption, would you run the line as called for in the code from that fore and aft hemlock to the Hangover Lead, or would you run it to the mouth of Slick Rock Creek?

A. Doing away with all lines, taking the course from the code, I would be liable to go most direct line to the main lead.

Q. 36. The most direct line to the main lead would be to the top of Hangover, would it not?

A. I don't know that it would be the most direct line, there might be a straight line, but taking meanders of ridge from that point it would probably reach the main ridge with as short a distance as any other.

Q. 37. When you say the main ridge you mean the Hangover do you not?

A. Yes, sir.

Q. 38. If you had been a surveyor running that line originally down to north bank of Tennessee River, at the fore and aft hemlock, and then you had run the line from there down the river to the mouth of Slick Rock Creek, would you have made your survey and calls show that you ran down the river to the mouth of Slick Rock Creek or would you have made the call as the commissioners made it and as it is in the code?

A. I always make my calls special when I strike a water course, and calling for it when I run with it.

Q. 39. When a surveyor is running a line, he makes notes as he goes along, and then when he is through running the line he makes out his report showing the calls of the line he ran, doesn't he?

A. Yes, sir; I always did.

Q. 40. Isn't it a fact that surveyors sometimes run more than one line and then determine afterwards which line to adopt, and then report the adopted line in their survey?

A. Yes, sir, I have done that in locating warrants of surveys.

Q. 41. In that case, they leave out of their report, the calls of all other lines, except the one finally adopted, do they not?

1220 A. Yes, sir; they would omit the calls of all except the one adopted.

Q. 42. You have stated that the distance from the fore and aft hemlock down the river to a point opposite Slick Rock Creek is 89 chains; this is more than a half mile isn't it?

A. Yes, sir.

Q. 43. Did you examine to see whether there was marked line running from hemlock down the river to the point opposite the mouth of Slick Rock Creek?

A. Yes, sir.

Q. 44. Did you find any state line marks on that line?

A. Nothing that satisfied us that they were state line marks; we found some old hacks and blazes down the river, but did not consider them state line marks.

Q. 45. Why did you examine for marks on this line on the north

side of the river, when the state line calls for crossing the river to the south side from the fore and aft hemlock?

A. I had previously examined the south side for marks but had failed to find any opposite the fore and aft hemlock.

Q. 46. Did you examine for marks on the south side all the way from a point opposite the hemlock down Slick Rock Creek?

A. No, sir; not all the way down.

Q. 47. You stated in your direct examination, Mr. Hyde, that you ran the state line from the turnpike road down to the Tennessee river, and found 20 to 25 state line marks. What is the distance from that turnpike road down to river?

A. I do not know the distance, never having measured it, but it is something over three miles, maybe near four, but I have never measured it.

Q. 48. As I understand your direct examination, you counted the growths on the hemlock block filed as Exhibit 6 to your deposition, twice? One time you made the growth 76 years and the other time 77 years?

A. Yes, sir.

Q. 49. Who procured the passage of the act of North Carolina General Assembly passed March 1, 1897, and copy of which is filed as Exhibit No. 7 to your deposition?

A. Mr. Deaton introduced the bill, our representative, so he wrote me.

Q. 50. Did you have any conference with Mr. Deaton about introducing this bill, before he introduced it?

A. I don't remember that I did. There was a law in the statute at that time providing for the location of the state line be-
1221 tween N. C. & Tenn., and that county surveyor of Graham county should do the work for N. C.

Q. 51. If there was already a statute providing for this survey, why was the new statute of March 1, 1897, procured to be passed?

A. The former law was not as full as the last act passed.

Q. 52. What part did you take in procuring the passage of this statute?

A. I don't know that I took any part in it any way. I may have written Mr. Deaton, but don't remember how that is now, but I got a letter from him.

Q. 53. Do you know Mr. J. W. Cooper, one of the defendants in this cause?

A. Yes, sir.

Q. 54. Did you have any conference with him about this statute?

A. None whatever, that I recollect of; if I did I have forgotten it.

Q. 55. Did you have any talk with him about it since the statute was passed?

A. I may have, but don't know that I have. I may have asked him his opinion, but don't remember that I have.

Q. 56. Don't you know from him or otherwise, that he was active in procuring the passage of this statute?

A. No, sir; I do not.

Q. 57. How long were you and Mr. Lovingood making the survey reported in your report filed as Exhibit No. 8 to your deposition?

A. Three weeks in my recollection now.

Q. 58. Did the statute under which you made this survey direct you to begin at mouth of Slick Rock Creek?

A. No, sir, directed to begin at state line on the south bank of Tennessee river.

Q. 59. Did you at that time know where the state line reached the river on north side at the fore and aft hemlock?

A. I had never seen the hemlock at that time, that I remember.

Q. 60. Who directed you to begin that survey at the mouth of Slick Rock creek?

A. No one at all.

Q. 61. How then did you know that that was the place to begin the survey?

A. By information obtained from marks on trees, and papers, grants from state of N. C.

Q. 62. Had your attention ever before that time been called to the marks on Slick Rock Creek?

1222 A. I had never searched Slick Rock creek for lines prior to that.

Q. 63. How did you happen to go to Slick Rock creek to search for lines?

A. We went into the Talassee Trail and camped and searched both sides of the creek; also the Hangover lead for state line marks, and arrived at the conclusion that the state line ran up the creek from the marks we found.

Q. 64. At the time you entered on this survey, you knew of the litigation in this cause about that land, did you not?

A. I had heard of it.

Q. 65. You had also heard that Bogle and Hayes had run a line up Slick Rock creek, hadn't you?

A. Yes, sir; I had heard they had run up the creek.

Q. 66. You also knew or heard that one McClellan had a few years before that, run and marked a line which he called the state line?

A. Yes, sir; I had heard that.

Q. 67. He ran and marked that line under a N. C. statute, didn't he?

A. No, sir; I don't understand that there was any statute at the time he ran the line; if there was I never seen it.

Q. 68. He ran that line for the state of North Carolina, didn't he?

A. That was my understanding.

Q. 69. That line didn't run up Slick Rock Creek, as you ran your line, did it?

A. It is not my information that it did.

Q. 70. Do you know of any other lines in that locality that had been run by state of N. C. or North Carolina surveyors, as the state line?

A. No, sir; I do not.

Q. 71. Coming now, Mr. Hyde, to the oak block filed as Exhibit

A to the deposition of W. D. Hale, can you swear that the marks on that block were not made by an axe?

A. I can't swear that they were not made by an axe, but can swear that I see no axe marks on them now.

Q. 72. The tree from which that block was taken grows on top of Hangover in a poor place, doesn't it?

A. The land is not very rich where it grows; it is on top of the ridge.

Q. 73. Is it not a scrubby, unhealthful tree?

A. Yes, sir; I don't consider it a healthy tree.

Q. 74. Is not the wood of that tree brittle and liable to break rather than sliver?

1223 A. I would think from the appearance that it is brittle on the outside of the tree but near about the heart it may be tough.

Q. 75. Is it not a fact that the wood of that tree is more liable to break and not to sliver when cut with an axe, than wood of the hemlock or spruce pine block, which are exhibited in this case?

A. I don't know that it is; hemlock is very brittle wood.

Q. 76. Assuming that hemlock is as brittle as oak, still would not the oak grown upon a poor spot be more brittle than hemlock grown upon better ground and with a healthier growth?

A. I don't know how that would be; I can't say as to that.

Q. 77. Please examine white oak block exhibited with W. D. Hale's deposition and state whether the scars or cat faces shown on the inside of outer portion of that block, are not similar to the scars shown on Exhibit A to Hale's deposition?

A. They are not the same. The upper scar of white oak block has angle running across it; the lower scar seems to have small sliver of wood grown in it, but no appearance of axe cut across it.

Q. 78. Is it not a fact that the crease or crack in the lower scar on the white oak block runs up and down the block and not across it?

A. It runs up and down it nearly; a slight angle.

Q. 79. Then in that particular, this scar on the white oak block is similar to the scar on Exhibit A the black oak block is it not?

A. It is as to the upper scar; on the black oak; the lower scar has two scars.

Q. 80. Is it not a fact that all the blocks filed as exhibits in this cause show that they were taken from healthy trees except the black oak block Ex. A to Hale's deposition, and the sourwood block Exhibit B to Hale's deposition?

A. Generally speaking, the blocks exhibited seem to have been of healthy growth, except those two.

Q. 81. Recurring to the chestnut oak stump about which you have testified in your direct examination, you have said that the scar on that chestnut oak stump that is caused by falling timber and may have been caused by limbs on lap of tree rubbing against the outside bark as they sometimes move and rub against another tree. How far above the ground on this stump is this old scar which you

1224 say may have been made by falling timber or by limb on lap of tree rubbing against outside bark?

A. I think about three feet.

Q. 82. Does not that stump lean towards that scar?

A. No, sir.

Q. 83. Is that stump straight?

A. The stump is straight or about it.

Q. 84. Did you find any fallen tree alongside that stump which may have caused that scar by falling?

A. The trunk of that tree or another was within a few feet of it.

Q. 85. Was it lying with end or side towards the stump?

A. My recollection is that it was lying with end little past the stump.

Q. 86. Was it lying on the side of stump next the scar?

A. Yes, sir; lying on side next the scar. Few feet from stump.

Q. 87. On which side of the stump was the scar?

A. Rather on north side of stump.

Q. 88. Then the fallen tree was lying east and west?

A. In an east and west direction.

Q. 89. Did that fallen tree have any limbs on it?

A. None that I remember noticing.

Q. 90. Was it a chestnut oak tree?

A. I do not remember; don't think bark was on the tree.

Q. 91. Do you mean by your answer to direct question to give the court to understand that the scar on that stump was made by that tree falling against it?

A. No, sir; I don't say that that tree made the scar.

Q. 92. You have said the scar may have been caused by limb or the lap of tree rubbing against outside bark. You mean by lap of tree, the limb portion of fallen tree?

A. Yes, sir.

Q. 93. Do you mean to say that the limbs of fallen tree rubbed against that stump and caused that scar?

A. I say it may have done it.

Q. 94. Did it do it while the tree was falling or after it fell?

A. I have seen scars made on trees by falling timber; also by limbs rubbing against the tree after they had fallen, lying against the tree.

Q. 95. Coming back now to the dead fallen tree which you say lay within a few feet of this stump, what part of that tree was nearest the stump—was it the butt of the tree or limb portion?

1225 A. It was the trunk of the tree; I don't remember as to limbs.

Q. 96. Did you cut into this chestnut oak stump to see what mark the wood showed?

A. I did not, but Mr. Carver that was with me did.

Q. 97. Isn't it a fact, Mr. Hyde, that you was sent to this chestnut oak stump for the express purpose of devising some excuses for that mark being on the stump outside of axe mark?

A. No, sir.

Q. 98. Do you mean for the court to understand you as swearing

that this mark on this chestnut oak stump could not have been made with an axe?

A. I say there is no appearance of an axe mark on that piece of bark that is visible to me.

Q. 99. Do you swear that this mark could not have been made by an axe?

A. I don't swear it could not have been made with an axe.

Q. 100. Do you swear it was made by tree falling against it or by limb of lap rubbing against it?

A. No, sir.

Re-examination:

Q. 1. Please state whether the extract from the depositions of Hale, Wilson and Muller the first time that Hale's deposition was taken and which you have handed to Mr. Carver on his re-examination, said re-examination being taken before your re-examination, is the only copy of Mr. Hale's deposition you ever had with you in running that line?

A. It is the only one.

Q. 2. Did you ever have with you in running that line any copy of Mr. Hale's second deposition?

A. I did not.

Q. 3. State what instructions were given you as to running the Hangover Lead line, as to ascertaining whether it was true state line and what was the purpose for which said extract from the said deposition or duplicate thereof, was furnished you?

A. I was asked to go and re-examine the Hangover Lead as to state line marks, and given the deposition to ascertain certain points called for and to locate those points, in the deposition and report.

Q. 4. Was the extracts of deposition given that you might locate trees and be certain that you examined the same trees?

A. Yes, sir; that was the express purpose they were furnished for, as I understood it.

1226 Q. 5. Have you any theory or opinion as to why it would have been natural for commissioners of N. C. & Tenn., in running state line in 1821 to have run up Slick Rock creek, as shown by the marked line which you found?

A. It would have been natural as I think, to locate some point on the south side of river when they were on the north side; I have opinion about it, but don't know that it would be worth my while to say anything about it.

Q. Please file as Exhibit No. 12 to your deposition original North Carolina grant No. 2969, about which you testified on your direct examination?

A. I so file it.

Q. Please file as Exhibit No. 13 to your deposition certified copy of North Carolina Entry No. 455 by John M. Lyle, here shown you?

A. I so file it.

Q. What is the nearest ford on the Little Tennessee River from the lands in dispute?

A. The Tallassee Ford is the nearest. It is down the river from Slick Rock some seven or eight miles.

1227 REUBEN CARVER, of lawful age, being duly sworn, deposed as follows:

I live near Robbinsville, Graham County, North Carolina, am 61 years of age, and am a farmer. I have formerly been a surveyor. I was county surveyor before Graham county was cut off from Cherokee county, and have also been county surveyor since the war—both before and since the war. I was county surveyor, altogether, for about 20 years.

Capt. Ep. Everett, as I learn it, lived before the war in Tennessee, in either Blount or Monroe county.

I knew Thos. B. Reynolds. He was the agent and representative of the Belding's and their associates as to their ownership of mountain lands several years ago. About 1882 Reynolds as agent for the Beldings and associates employed me to locate and survey certain lands.

I knew Reynolds' handwriting. I have examined a lease from Henry Lewis, D. W. Belding and Associates by Thos. B. Reynolds, atty. in fact dated Nov. 16, 1882, to John Debity and John Debity, Sr., and the same in the genuine handwriting of said Reynolds and his signature is his genuine signature.

I file said lease as Exhibit No. 1 to my deposition. Said grant covers entry No. 1035 or what is known as the Big Survey, and is the same land on which the two Debity's lived.

Questions by Capt. COOPER:

In October 8th 1892, I, for Mr. Belding and associates, leased the Nichols Cove place to James Farr. Said lease was in writing and I file the same as exhibit No. 2 to my deposition.

About 1869 or 1870 I surveyed certain North Carolina entries for Tennesseeans. Their names were Nutte (?) Harrison, Calvin Harrison, and either John or Bill Harrison. I think perhaps
1228 they took out the entries in the name of Ballew. The Harrisons lived in Monroe County, Tennessee. I met them at the mouth of the Big Fat Branch and the next morning we went across Slick Rock creek over on the ridge that leads up from Slick Rock creek to the Big Fodder Stack, and they said that the state line ran up that ridge, and they wanted their entries located up towards Hangover from that point, and I located them in that direction, lying southeasterly from this ridge in the direction of Hangover.

I was along with H. S. Hayes and J. C. M. Bogle when they made their survey of the state line. I was employed by the Beldings. I have been recently in the general employment of the Beldings. I carried chain part of the time on this survey, and was flag bearer part of the time.

I went with them in the search for state line up Slick Rock Ridge and Little Fodder Stack; also on the survey up Slick Rock creek, and also on the Hangover Lead. I helped Mr. Bogle search along this

line. The conclusion I reached as a surveyor was that the state line that had been run by the commissioners was the line running up Slick Rock creek to the ridge, thence up the ridge to the Big Fodder Stack and then along that Big Fodder Stack lead to its junction with the Hangover lead. I had no doubt at all in my mind about this being correct.

There were 15 or 20 marked state line trees on this line. I don't remember exactly how many—it was not part of my business to keep the number of trees. There may have been more or less than 15 or 20. These trees all seemed to be same kind of marks, made at same time and with same kind of axe. I think I could have found more marked trees if I hadn't been flag bearer, and had time to have hunted. I don't think I saw all the trees that were found. The fore and aft trees were marked with two hacks and a blaze, on two sides in opposite directions as you approached and left the tree. The side line trees were marked with three hacks. They blocked several trees and the age all corresponded.

On the Hangover Lead I was not at the black oak about ¾ of a mile from the river. I was at the double sourwood in Sourwood Gap. I didn't think that there were any state line marks on that sourwood. I examined it carefully and hunted round in the gap with Mr. Bogle to see if we could find any state line trees. I am still of the same opinion that it has no state line marks.

The marks on block filed as exhibit B to Hales deposition do not indicate state line marks. The marks on that tree simply
1229 indicate to me that somebody was simply hacking around there on the trees at the deer stand in going along the old trails. We find such marks all along on the old mountain trails, all through the mountains everywhere; sometimes with hacks and no blazes; sometimes with blazes and no hacks, and sometimes with more or less of both blazes and hacks. We found trees hacked and blazed on the old trail leading down from this sourwood on both sides down the mountain sides. They appeared to be the same kind of hacks and blazes as those on the sourwood.

The two prongs of this sourwood cross each other from east to west about at the root.

I saw the black oak south from the sourwood about 63 chains. I took it to be a North Carolina corner.

I went with Bogle all the way, he went on Hangover Lead from the sourwood on south. We were searching for state line trees and found none we took to be state line trees.

Referring to the ridge leading up from Slick Rock Creek to the Big Fodder Stack, the trail does not follow along in all places the same as the marked line of trees on state line as we ran it. In some places where we found state line trees the trail was some distance away.

Mr. Reynolds acted as agent for Belding, Lewis and associates for two years or thereabouts, and was their general agent in surveying and leasing lands.

I can't recollect now the number of the entries I surveyed for Har-

risons as above stated, except I remember it was two tracts and in the name of either Harrison or Harrison and Ballew.

Cross-examination by McCROSKEY:

The sourwood block I didn't take to be a state line mark. The lower mark seems to be a scalp with an axe, and I think there are three hacks above—two strokes close together and one above that. I don't remember particularly any trees with two hacks and blaze on trail leading down from each side of sourwood, but there were all kinds of blazes and hacks. Nearly all the trees around were blazed and hacked. I have been acting as agent for the Beldings for 10 or 12 years. I never made a survey of the Big Survey. I never ran the Fodder Stack Lead around by head of Little Slick Rock creek as state line. I never took any leases for the Beldings from any parties on the waters of Little Slick Rock. I tried to get some of them—the Leadbetters—back about '86 or '87 or about that time. One of them lived where Henry Ditmore now lives on Little Slick
1230 Rock and the other lives close by. I tried to get these leases by direction of Mr. Belding. He has always claimed all the land drained by the waters of Little Slick Rock as well as Big Slick Rock. He claimed from the mouth of Slick Rock creek: thence up the ridge to Tallassee Mtn. and along Little Fodder Stack and Big Fodder Stack to the junction with Hangover Lead.

In surveying on crossing or running with streams I generally note that fact in my report of survey. If I located the state line ½ mile down Tennessee river and then up Slick Rock creek for 5 miles, I think I would have mentioned this in my report. If the commissioners located the line in this way and didn't mention it, I can not explain it.

I have never before this had any experience in locating state lines.

Redirect examination by Capt. COOPER:

I am acquainted with the tops of the mountains along the Hangover. I have noted prominent rocks along them, and if I had been running state line as a surveyor along the Hangover lead I think I would have noted them in my report.

After leaving the Fodder Stack junction the largest Hangover ridge heads down on Tennessee river between Bear creek and Slick Rock creek. Hangover is at the butt of the mountain and north of the main ridge that leads from the junction down to the Cheoah between the Santeetla and Deep or Rock creek. This ridge that leads down to the Cheoah is the biggest and highest lead going off from the beech at junction and turning off at the Hao down to the river. There is a great gap between the Hao and Hangover. No ridge runs on a direct course beyond the Hangover, in running from the Hao to the Hangover. The biggest ridge runs down from the Hao to the Cheoah.

And further deponent saith not.

REUBEN CARVER.

Filed Sept. 21, 1897. J. T. Carter, deputy clerk.

POOR COPY

EXHIBIT No. 1 TO DEPOSITION OF REUBEN CARVER.

Lease to John Debity, Sr., and John Debity, Jr.

This instrument, made this 16th day of November, A. D., 1882;
Witnesseth: That Henry Lewis and associates, of Cincin-
1231 nati, Ohio, by Thos. B. Reynolds (their atty. in fact) have
leased to John Debity, Sr., and John Debity, Jr., of Graham county, North Carolina, for the term of one year the following described realty, to wit:

Being tract 1035 and beginning on a beech on the state line where the Hangover mountain strikes the state line near the corner of 5051, and runs with said line south 80 east 320 poles to a mountain oak, then with the line of 4455 north 40 east 320 poles to a Spanish oak; then north 45 east 28 poles to a water oak; then east 92 poles to a large rock on the top of the 2nd high peak of the Hangover Mtn.; then down the ridge with its meanders to a sarvice tree on Cheoah river; then down said river to Tennessee river; then down said river and its meanders to a corner of 627 at the mouth of Slick Rock and the state line to the top of the mountain to a locust on said line; then with said line and its meanders to the beginning.

Said lessees agreeing to pay the sum of five dollars therefore, to become due and payable October 1st, 1883, and said lessees futher agree not to waste or destroy any valuable timber on said property, or permit others to do so, and that they will hold and protect said premises as the lessees of Henry Lewis and Associates, and at the expiration of this lease surrender peaceable possession unto said lessor or their assigns.

In testimony the parties hereto have subscribed their names and affixed their seals on the day above named.

HENRY LEWIS & ASSOCIATES,
By THOS. B. REYNOLDS, [SEAL.]
Their Att'y in Fact.

his
JOHN x DEBITY, Sr., [SEAL.]
mark

his
JOHN x DEBITY, Jr., [SEAL.]
mark

HENRY LEWIS, (*Pres't.*)
D. W. BELDING.
HENRY STIX.
NATHAN STIX.
D. W. STRICKLAND.
LOUIS KROHN.
J. W. COOPER.
E. TROY, *Sec'y.*

Witness:

THOS. B. REYNOLDS.

EXHIBIT No. 2 TO DEPOSITION OF REUBEN CARVER.

STATE OF NORTH CAROLINA,
Cherokee County:

The following agreement this day made by and between D. W. Belding, D. W. Strickland, Henry Stix, Nathan Stix, Louis Krohn, Nathaniel Newburgh, and D. M. Hyman, of Hamilton
1232 county, of the state of Ohio, and M. M. Belding and Alvah N. Belding, of New York county, of the state of New York, and J. W. Cooper, of Cherokee county, of the state of North Carolina, parties of the first part, and James Farr, of the county of Graham of the state of North Carolina, party of the second part;

Witnesseth, that the said parties of the first part do hereby agree to lease and to farm let unto the said party of the second part, the following described tract of land in Graham county, North Carolina, to wit:

Tract No. 1035, grant 2336; Beginning and bounded as follows: All that part of the above tract known as the Nichols Cove, for the purposes of farming only and for the term of 1 year, for the consideration and upon the terms herein and hereafter set forth.

The said party of the second part in consideration of the said lease, use, occupation and enjoyment of said premises, does hereby agree to pay to the said parties of the first part annually $5.00 as rents for the same. And he does further agree that he will not commit nor suffer waste to be committed on said lands by cutting of timbers or otherwise. And it is further agreed that the said parties of the first part, their assigns and agents, shall at all time or times have right to enter on said premises and remove timbers, mine on or improve the same or do any other lawful act during this lease. And it is hereby further agreed by the said party of the second part that for any failure on his part to perform any of the stipulations in this agreement that the same shall work a forfeiture on said term of lease. That he will cede full and peaceable possession of said lands to said parties of the first part at the end of his said term.

In witness whereof the said parties hereunto have signed their names on this the 8th day of October, 1892.

J. A. FARR.

Witnesses:
R. CARVER.
F. M. CARINGER.

1233 Next witness, REUBEN CARVER, of lawful age, being duly sworn, deposed as follows:

Q. 1. Are you the same Reuben Carver, whose deposition has already been taken in this case?

A. I am.

Q. 2. Have you since your former deposition been with Mr. H. P. Hyde and re-examined the alleged line along the Hangover lead and examined the state line north of the river with him?

A. Yes, sir.

Q. 3. Was that done this last week?

A. Yes, sir.

1234 Q. 4. Were you with him when the block was taken from the spruce pine or hemlock on the north bank of Tennessee river?

A. Yes, sir.

Q. 5. Is the block which has been filed by him hereto the original block taken from that tree?

A. Yes, sir.

Q. 6. Did you see the marks on the various state line trees north of the river?

A. Yes, sir.

Q. 7. How did these marks compare as to apparent age, distance of marks apart, kind of axe and general appearance with what you testified to in your former deposition as being state line marks on the trees extending from the mouth of Slick Rock creek up creek to Fodder Stack ridge, thence up ridge to Fodder Stack lead, thence along the lead at the time the party composed of Mr. Hayes Bogel and yourself ran the line?

A. It has the appearance of same hacks we followed south of river, up creek to Fodder Stack lead and with mountain—same axe, cut same way, and same size axe.

Q. 8. Did the marks on tree north of river indicate to your mind as surveyor that they were made by the same party and at same time as the marks on the Slick Rock creek line south of the river?

A. They appeared to have been made at same time; had that appearance to me.

Q. 9. In following this line north of river, did you ever now and then find trees freshly cut with H. & W.?

A. We found fresh marked trees with W. & H.; I did not count them.

Q. 10. You examined with Mr. Hyde the black oak tree on the Hangover lead about three-fourths of mile from river?

A. Yes, sir.

Q. 11. Please examine block Exhibit A to W. D. Hale's deposition and state whether taking into connection this block and the marks on that tree as they still stand, you see any marks showing said tree to have been marked as state line tree in 1821?

A. I do not.

Q. 12. Please state in your own language what you noticed about that tree and what you now notice about that block, that indicates to your mind as surveyor that that tree was not marked as state line tree?

A. There were six blocks at the root of this tree, appeared to be cut at time as Ex. A.; they all had scars like Exhibit A. has

1235 on inside, and some of them had those kind of scars on the bark; I picked one of those blocks up and dressed it up and started to bring it here; where we hitched up our horses to go down to Tennessee river at butt of Smoky Mt., on north side. I left the block laying there and come off and forgot it. I also noticed some

scars all over the tree nearly in the bark like those on Exhibit A, and it had the appearance of the same kind of scars above and below where the block was cut out in the body of the tree as Exhibit A has on the inside. I mean by that it had marks where block was cut out on the body of the tree, with same kind of scars as there is on inside of Exhibit A. In cutting out block they had taken out tremendous piece, nearly half of the tree and at different depths from the bark to the center of tree I noticed scars similar to those in Exhibit A.

Q. 13. Did you hunt on those pieces lying there and on body of tree to find axe marks?

A. Yes, sir; I did but I didn't find any.

Q. 14. When a hack is made in a tree with an axe, if the wood is preserved without decaying and the tree is blocked, ought there to be mark of axe or sliver showing on inside face of the outside block, and also the mark where the axe stopped on the outside face of the inside block?

A. Yes, that is shown by block Exhibit C. to dep. of H. S. Hayes; in other words it takes one or two years' growth to cover over the impression of the scar, and also the wood fills up the cut that has been made, and also wood grows down and fills up the cut that has been made on the old hack, then when it is split open the block shows the impression of the old hack on the new growth.

Q. 15. Does block Exhibit A. show anything of that sort?

A. Not a bit.

Q. 16. How will the scar when it heals be cracked, up and down or across?

A. It will show just the way the stroke of the axe hit the wood.

Q. 17. When a man stands and cuts a tree to mark a hack on, does he cut it up and down or slantingly?

A. He hacks it at an angle of about 45 degrees, in marking line trees.

Q. 18. Did Mr. Hyde, when you were with him run a line of Entry No. 920?

A. A part of one of the lines.

Q. 19. Did that line lead down off the side of the ridge?

A. Yes, sir.

Q. 20. How did you find the hickory that has been tes-
1236 tified to by Hale and Wilson marked with reference to line of No. 920?

A. Marked on east side according to line of No. 920?

Q. 21. Did you find any other trees on that line of No. 920?

A. Yes, sir.

Q. 22. Both side lines and fore and aft?

A. As I recollect we found two other trees on the line—one was side line and the other, I think, was fore and aft.

Q. 23. How was this hickory marked as corresponding or differing with the other trees marked on No. 920?

A. Seemed to be marked in same manner, same kind of axe, and same manner, with same slant and all on the line, and bearing east from top of ridge.

Q. 24. Is Exhibit No. 10 to Mr. Hyde's deposition the entire piece of bark you cut out of the chestnut oak stump?

A. There was nothing left on the stump showing any hacks or marks, and this is the entire piece as we took it off.

Q. 25. Is there anything on that piece that indicates to your mind as a surveyor any state line marks?

A. Not a thing.

Q. 26. What does it indicate?

A. It looks like there had been a piece of bark knocked off by falling tree or something of that kind.

Q. 27. Did you look at double sourwood again?

A. Yes, sir.

Q. 28. Did you see anything to change your former opinion?

A. Not a thing.

Q. 29. Has your last survey caused you to doubt your former conclusion as to the location of the state line?

A. No, sir.

Q. 30. What sort of a house, if any, did old man John Deputy have when he lived on this land east of the creek?

A. He lived in log house. He had two houses close together—used one for cook house.

Q. 31. Did he have any inclosures, and if so, how large?

A. Had 10 or 12 acres under fence and part of it cultivated. He also had mill down on creek near his house.

Q. 32. Did you know J. W. C. Piercy?

A. I was acquainted with him.

Q. 33. Is he now living or dead?

A. Dead.

Q. 34. Did he ever live near old man Thomas Tatham, if so, when, how close, and for how long?

A. He lived near him for number of years; up until old
1237 man Tatham's death; they lived from mile to mile and a half apart.

Q. 35. How old is old man John Deputy?

A. I don't know exactly; but about 80 years old.

Q. 36. What is his son Emerson Deputy sometimes called?

A. Babe Deputy.

Cross-examination by solicitor for complainant.

Q. 1. How long have you been a surveyor, Mr. Carver?

A. 15 or 20 years.

Q. 2. Have you been constantly engaged in surveying during that time?

A. No, sir.

Q. 3. Do you live in North Carolina?

A. Yes, sir.

Q. 4. In what county?

A. Graham.

Q. 5. Have you ever been a county surveyor?

A. Yes, sir.

Q. 6. Of what county?

A. Graham and Cherokee.

Q. 7. When did you first survey any part of state line of the land in dispute?

A. I have never surveyed any part of the state line?

Q. 8. Do you know where the state line is at that point?

A. I was along with Mr. Bogle and Mr. Hayes last Feby.

Q. 9. Now, question is, do you know where the state line is along this land in dispute?

A. I know where the line is we found, taking it to be the state line.

Q. 10. Do you refer to line running up Slick Rock creek?

A. Yes, sir.

Q. 11. Your answer then is, that if this is the state line you know where the state line is?

A. Yes, sir.

Q. 12. Do you swear that the scars on the black oak block Exhibit A to Mr. Hale's deposition were not made with an axe.

A. I don't see any hacks resembling an axe mark on the block.

Q. 13. Because you do not see any marks resembling an axe hack on the bark, can you swear it was not made by an axe?

A. No, sir.

1238 Q. 14. Who employed you to go on this survey with Mr. Hyde?

A. Mr. Hyde instructed me that Mr. Sanford requested that we should go there and look over the ground.

Q. 15. Coming now to the piece of bark cut from the chestnut stump and filed as Exhibit No. 10 to Mr. Hyde's deposition—please examine the inside of that piece of bark and state if the mark appearing on outside of bark does not go clear through and show on inside of the bark?

A. I think it does.

Q. 16. Did you cut into that stump under the place you took the bark from to see whether there was any mark on the wood?

A. Yes, sir.

Q. 17. Did you cut a block out?

A. No, sir.

Q. 18. Then, how did you cut into the wood?

A. I scalped the wood off on the outside with an axe.

Q. 19. How thick was the wood at that point?

A. Some two or three inches I think.

Q. 20. Did you bring with you the pieces of wood you cut from that stump?

A. No, sir.

Q. 21. You have stated in your direct examination, that the place on this stump looks like there had been a piece of bark knocked off by falling tree or something of that kind; what suggested that idea of falling tree to you?

A. I have saw such occurrences in the woods.

Q. 22. If the bark of this stump was knocked off by a falling tree, how long ago was it that this was done?

A. I can't tell you.

Q. 23. In the cases where you have known bark to be knocked off by falling tree, how long after it was knocked off was it that you saw it?

A. I can't tell you that in all the cases.

Q. 24. In how many instances have you known bark to be knocked off by falling tree?

A. I never kept any account.

Q. 25. In those cases where you have known bark to be knocked off by falling tree, isn't it a fact that the bark was knocked off in long strip and irregular strip?

A. I have seen it in different ways.

Q. 26. Have you ever seen as old a mark as the mark on Ex. 10 to Hyde's deposition, where you could say positively that the mark was made by a falling tree knocking the bark off?

A. I don't know that I could.

1239 Q. 27. Isn't it a fact that you and Mr. Hyde when you went to this chestnut oak stump, put your heads together to account for this mark on the stump in some other way than to say it was done by an axe?

A. No, sir.

Q. 28. Who first suggested that this mark was made by falling timber—was it you or Mr. Hyde?

A. I don't recollect as to that.

Q. 29. How high was this mark on this stump from the ground?

A. Something about three feet I think.

Q. 30. Did you ever know an instance where the bark of a tree was knocked off as low down as three feet above the ground by another tree falling against it?

A. Yes, sir.

Q. 31. Where was it and what kind of a tree was it that had the bark knocked off, and what kind of tree did the knocking off?

A. I don't recollect as to that, sir.

Q. 32. Isn't it a fact, Mr. Carver, that the falling tree would catch upon the limb of the tree upon which it was falling, that these limbs would throw the falling tree off from the body of the other tree?

A. Not in all cases.

Q. 33. In what sort of a case would the limbs fail to throw the falling tree off from the body of the other tree?

A. The tree might be leaning a little, or not have limbs large enough to protect it from the falling tree.

Q. 34. Then if the tree was straight, the limbs would throw the falling tree off, would it not?

A. It would be owing to circumstances then.

Q. 35. What circumstances?

A. If the lap of falling tree was falling direct towards the standing tree, it would break the limbs of the falling tree and let it pitch direct against the standing tree.

Q. 36. Was the fallen dead tree which you and Mr. Hyde saw lying near this stump, lying with its limb end towards the stump?

A. I don't recollect as to that.

Q. 37. Did you see any such fallen dead tree lying near the stump?

A. There was a trunk of tree lying near the stump. That tree never done this mark.

Q. 38. Did you see any other fallen tree there?

1240 A. Didn't notice as to that. This log was lying right in my way where I was standing when I chopped out the bark.

Q. 39. You thought this mark had been made by falling tree, didn't you?

A. I don't know that I thought but little about it at the time: I have never seen the stump before.

Q. 40. Didn't you and Hyde go there for purpose of seeing this mark on the stump and determining how it was made?

A. Yes, sir: we went there purposely to see the mark on the stump, and to see whether it was an axe mark or not.

Q. 41. You and he agreed in your depositions in suggesting that this mark on the stump was made by fallen tree: now didn't you agree there at the time that this mark was made by fallen tree?

A. That was our conclusion. We didn't think an axe could scalp thick bark off and leave this point in the upper part, as axe would cut it smooth when it cut it.

Q. 42. Then when you agreed there at the stump that the scar was made by falling tree, didn't you look around to see if you find the fallen tree that made the scar?

A. No, sir: we knew it wasn't worth while—at least I did.

Q. 43. Didn't you and he talk among yourselves whether the fallen tree that was lying near the stump had caused this scar?

A. No, sir.

Q. 44. Didn't you and Mr. Hyde understand, when you went to examine the black oak from which Exhibit A to Hale's deposition is taken, that you were sent there for the purpose of breaking down if possible Hale's testimony on that black oak?

A. I never heard anybody talk anything about breaking down Hale's testimony as to the black oak.

Q. 45. Did you know when you went there what Hale had testified about that black oak?

A. I think probably I had seen Mr. Hale's deposition.

Q. 46. Didn't you have copy of that deposition with you?

A. I did not.

Q. 47. Didn't Mr. Hyde have a copy?

A. Yes, sir.

Q. 48. You and he were together weren't you?

A. Yes, sir.

Q. 49. Where were you and he when you read over that deposition?

A. I don't recollect as to that, but read it over at different times.

Q. 50. Didn't you read it over at the stump?

1241 A. I don't recollect as to that.

Q. 51. The purpose you had in reading it over, was to see whether you could do Hale up in his testimony, wasn't it?

A. We read it over for the purpose of seeing what he had testified to.

Q. 52. Couldn't you get at the facts about the marks on that tree without knowing what Hale had sworn to?

A. Yes, sir.

Q. 53. Then where was the necessity of you and Mr. Hyde knowing what Hale had sworn to?

A. We wanted to see if his testimony corresponded with the marks on the tree.

Q. 54. You could tell what the marks on the tree were without seeing what he had sworn to, couldn't you?

A. Yes, sir.

Q. 54. Then if your purpose was solely to tell the facts as shown by these marks, what business did you have with Hale's deposition?

A. I didn't have Mr. Hale's deposition; can't tell how Mr. Hyde happened to have it; don't know who gave it to him.

Q. 55. Now, assuming that you didn't have the deposition, and Hyde did have it, and you were both along together for the same purpose, and did read the deposition, then what business did you have with Hale's deposition?

A. I had none.

Q. 56. The reading of that deposition wouldn't make your evidence any clearer, would it?

A. Don't suppose it would.

Q. 57. Now, isn't it a fact Mr. Carver, that you and Hyde went to that black oak tree for the purpose of finding some evidence to contradict Mr. Hale?

A. We went there for the purpose if we could see any hacks indicating the state line marks on that tree and along that lead.

Q. 58. And you understood that the people that you represented didn't want to find any state line marks on that tree or on that lead?

A. I never understood any such a thing.

Q. 59. You understood that was the proposition they expected to establish by your testimony?

A. I don't know that I understood what they were going to establish by my testimony; there wasn't any understanding about it

Q. 60. You understood that it would be favorable to their side of the case to show that there were no state line marks on
1242 Hangover Lead, but to show that the state line marks were on Slick Rock Creek or Fodder Stack Lead, didn't you?

A. I suppose they had rather have it on Slick Rock Creek than Hangover Lead, but that is supposition?

Re-examination:

Q. 1. When you speak of having Mr. Hale's deposition with you, do you mean his first deposition at the time that he, Wilson and Muller testified?

A. I understood it was the first one.

Q. 2. Is the copy of the deposition you have been testifying about the paper which is now handed you by Mr. Hyde?

A. I think it is.

(It is agreed that the paper shown to witness is copy of extra from the deposition of Hale, Wilson and Muller, and an exact dup cate of which was filed as Exhibit No. 4 to H. P. Hyde's former dep sition.)

Further saith not.

REUBEN CARVER.

Sworn to and subscribed before me this September 28th, 1897.

[J. T. Carter, Eastern District of Tennessee, United States Commissioner.]

J. T. CARTER,
U. S. Com'r.

Filed Sept. 30, 1897. J. T. Carter, Deputy Clerk.

[End of Volume II.]